

LIVING DONOR PROTECTION ACT - ENACTMENT

Act of Apr. 27, 2021, P.L. 39, No. 11

Cl. 35

An Act

Providing for living donor protection; and imposing duties on the Department of Health and the Insurance Department.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the Living Donor Protection Act.

Section 2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Eligible employee." As defined in the FMLA.

"FMLA." Family and Medical Leave Act of 1993 (Public Law 103-3, 29 U.S.C. § 2601 et seq.).

"Insurance policy." As follows:

(1) A policy, subscriber contract, certificate or plan which provides health care or life coverage and which is offered, issued or renewed by an insurer.

(2) The term does not include accident only, fixed indemnity, hospital indemnity, limited benefit, credit, dental, vision, specified disease, Medicare supplement, Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) supplement, long-term care or disability income, workers' compensation or automobile medical payment insurance.

"Insurer." As follows:

(1) An entity licensed by the Insurance Department with authority to issue insurance policies or governed under any of the following:

(i) The act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921, including section 630 and Article XXIV of The Insurance Company Law of 1921.

(ii) The act of December 29, 1972 (P.L.1701, No.364), known as the Health Maintenance Organization Act.

(iii) 40 Pa.C.S. Ch. 61 (relating to hospital plan corporations) or 63 (relating to professional health services plan corporations).

(2) (Reserved).

"Living donor." An individual who:

(1) has donated all or part of an organ or tissue; and

(2) is not deceased.

"Organ." As follows:

(1) A human kidney, liver, heart, lung, pancreas, esophagus, stomach, small or large intestine or portion of the gastrointestinal tract or another part of the human body designated by the Department of Health by regulation.

(2) The term includes blood vessels recovered during the recovery of an organ under paragraph (1) if the blood vessels are intended for use in organ transplantation.

"Tissue." As follows:

(1) A portion of the human body other than an organ, including, but not limited to, a human eye, skin, bone, bone marrow, heart valve, spermatozoon, ova, artery, vein, tendon, ligament, pituitary gland or fluid.

(2) The term does not include blood or a blood derivative, unless the blood or blood derivative is donated for the purpose of research or education.

Section 3. Informational materials.

(a) Authorization.--The Department of Health shall develop informational materials relating to living donors and the live donation of organs and tissue.

(b) Contents.--The informational materials shall include, but not be limited to, the following:

(1) The benefits of live organ and tissue donation.

(2) The impact of the donation of organs or tissue on a living donor's access to insurance and assistance.

(3) The reduction in Federal adjusted gross income, for State personal income tax purposes, granted to a living donor.

(4) The protections granted to a living donor under this act, including a living donor's rights under the FMLA and information on filing a complaint with the United States Department of Labor's Wage and Hour Division if the living donor believes that the living donor's employer is not in compliance with the FMLA.

(c) Distribution.--The informational materials shall be:

(1) distributed in printed form, upon request; and

(2) posted on the publicly accessible Internet website of the Department of Health.

(d) Update.--The Department of Health shall periodically update the informational materials.

Section 4. Prohibited practices.

(a) Prohibitions.--Subject to subsection (b), an insurer may not:

(1) Engage in any of the following actions against an individual based solely upon the individual's status as a living donor without additional risk based on sound actuarial principles reasonably related to actual or anticipated loss experience:

(i) Decline to provide an insurance policy to the individual.

(ii) Limit coverage under an insurance policy of the individual.

(iii) Otherwise discriminate against the individual regarding the premium rating, offering, issuance, cancellation, amount of coverage or any other condition of an insurance policy.

(2) Preclude an insured from donating all or part of an organ or tissue as a condition for receiving or continuing to receive coverage under an insurance policy, except that an insurer may decline to issue a life insurance policy to an applicant with a scheduled donation until the applicant is released without complication by the surgeon to the care of the applicant's primary care physician.

(b) Construction.--Subsection (a)(2) shall not be construed to require an insurance policy form to include coverage of organ donation.

Section 5. Family and medical leave.

(a) Entitlement.--An employer subject to the FMLA shall provide the same leave to which an eligible employee is entitled under the FMLA, when the eligible employee is unable to work because of a serious health condition or when the eligible employee must care for the eligible employee's spouse, child or parent with a serious medical condition, for the preparation and recovery necessary for surgery related to organ or tissue

donation by or for the eligible employee or the eligible employee's spouse, child or parent.

(b) Documentation.--An employer may require an eligible employee to submit written documentation regarding the preparation and recovery necessary for surgery described under subsection (a).

Section 6. Enforcement.

A violation of section 4 is an unfair or deceptive act or practice under the act of July 22, 1974 (P.L.589, No.205), known as the Unfair Insurance Practices Act.

Section 7. Rules and regulations.

The Department of Health and the Insurance Department may each promulgate rules or regulations as may be necessary to carry out the provisions of this act.

Section 8. Effect of act.

Unless specifically provided otherwise under this act, nothing in this act shall be construed to interfere with other State law regarding organ or tissue donation.

Section 9. Effective date.

This act shall take effect in 60 days.