

SENATE HEALTH, HUMAN SERVICES AND SENIOR
CITIZENS COMMITTEE

STATEMENT TO
SENATE, No. 3813

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 17, 2019

The Senate Health, Human Services and Senior Citizens Committee reports favorably and with committee amendments Senate Bill No. 3813.

This bill expands the “Law Against Discrimination” (LAD), P.L.1945, c.169 (C.10:5-1 et seq.), to apply to health programs and activities, which are defined in the bill to mean the provision or administration of health-related services, health-related insurance coverage or other health-related coverage, and the provision of assistance to individuals in obtaining health-related services or health-related insurance coverage. The entities the bill will apply to include, but are not limited to, health care facilities, long-term care facilities, residential and community-based treatment facilities, and health care practices operated by a licensed or certified health care practitioner, as well as health benefits plans, health benefits carriers, and the State Medicaid and NJ FamilyCare programs.

The LAD generally prohibits discrimination in the workplace, in places of public accommodation, and in transactions involving housing and other real property against an individual based on the individual being a member of a protected class, including race, creed, color, national origin, nationality, ancestry, age, marital status, civil union status, domestic partnership status, affectional or sexual orientation, genetic information, pregnancy status, breastfeeding status, sex, gender identity or expression, disability or atypical hereditary cellular or blood trait of any individual, or liability for service in the armed forces. In some cases, the LAD provides broad protections for all protected classes; in other cases, it provides specific protections to specific populations, such as workplace protections for women who are pregnant or breastfeeding or for individuals to practice religious observances.

The bill will expand the existing LAD protections to provide that it will constitute unlawful discrimination for any entity that operates a health program or activity to:

(1) exclude, deny, or otherwise discriminate against individual in a health program or activity on the basis of the individual being a member of any protected class;

(2) aid or perpetuate discrimination against any person by providing significant assistance to any entity or person that discriminates on the basis of any protected class;

(3) utilize criteria or methods of administration that have the effect of discriminating on the basis of sex or, when making selections when determining the site or location of a facility, have the effect of excluding individuals from or denying them the benefits of, or otherwise discriminating on the basis of sex;

(4) treat any individual in a manner inconsistent with that individual's gender identity;

(5) fail to ensure that communications with individuals with disabilities, including but not limited to individuals who are deaf or hard of hearing, are as effective as communications with others in the health program or activity and sufficient to ensure those individuals an equal opportunity to participate in, and enjoy the benefits of, the health program or activity;

(6) fail to ensure that, when newly constructing or making alterations to all or part of a facility, the affected portions of the facility are accessible to individuals with disabilities, consistent with the current applicable standards for accessible design adopted pursuant to the "Americans with Disabilities Act of 1990";

(7) fail to ensure that any health programs or activities provided through electronic and information technology are accessible to individuals with disabilities, unless doing so would result in undue financial and administrative burdens or a fundamental alteration in the nature of the health program or activity;

(8) fail to make reasonable accommodations and modifications to policies, practices, or procedures when necessary to grant an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, the health program or activity, unless the entity demonstrates that making the accommodations or modifications would be an undue burden or would fundamentally alter the nature of the health program or activity;

(9) engage in marketing practices or benefit designs that discriminate on the basis of disability; or

(10) fail to provide meaningful access to individuals with limited English proficiency who are eligible to receive the benefits or services of the health program or activity, including providing appropriate interpretation and translation services for oral and written communications, which may be provided in-person or electronically.

As amended, the bill provides that it is unlawful discrimination for any entity providing or administering a health benefits plan to discriminate against any individual on the basis of the individual being a member of a protected class, including: denying, canceling, limiting,

or refusing to issue or renew a health benefits plan; denying or limiting coverage of a claim; imposing additional cost sharing or other limitations on coverage; having or implementing marketing practices or benefit designs that discriminate on the basis of any protected class; having or implementing a categorical coverage exclusion or limitation for all health services related to gender transition; or otherwise engaging in practices that discriminate against any transgender individual.

As amended, nothing in the bill will be construed to abrogate the provisions of P.L.1974, c.111 (C.2A:65A-1 et seq.) or 42 U.S.C. s.300a-7 et seq., which provide that no individual or health care facility may be required to provide abortion or sterilization services or procedures.

Each entity that operates a health program or activity will be required to provide notice to beneficiaries, enrollees, applicants, and members of the public that: the entity does not discriminate on the basis of any protected class; and the entity complies with the other provisions of the “Law Against Discrimination.”

This notice is to be posted in a conspicuous physical location where the entity interacts with the public and in a conspicuous location on the entity’s web site, and must include taglines in the 10 most common non-English languages spoken in the State.

The bill further prohibits any act of unlawful discrimination or any unlawful employment practice when taken against an individual based on the individual’s association with a member of any protected class.

COMMITTEE AMENDMENTS:

The committee amendments shift the majority of the bill’s language into a new section supplementing the “Law Against Discrimination.”

The committee amendments add language clarifying that prohibited discrimination includes utilizing, directly or through contractual or other arrangements, criteria or methods of administration of a health program or activity that have the effect of subjecting individuals to discrimination on the basis of sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals on the basis of sex.

The committee amendments add language providing that nothing in the bill is to be construed to abrogate the provisions of P.L.1974, c.111 (C.2A:65A-1 et seq.) or 42 U.S.C. s.300a-7 et seq., which provide that no individual or health care facility may be required to provide abortion or sterilization services or procedures.

The committee amendments revise certain specific requirements that detail how a health program or activity is to provide meaningful access to individuals with disabilities and individuals with limited

English proficiency, who are eligible to receive the benefits or services of a health program or activity.

The committee amendments revise certain notice requirements for entities that operate health programs or activities.