SENATE, No. 3846

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JUNE 1, 2021

Sponsored by:
Senator STEPHEN M. SWEENEY
District 3 (Cumberland, Gloucester and Salem)

SYNOPSIS

Prohibits certain forms of discrimination in DOH policies concerning allocation of critical health care resources.

CURRENT VERSION OF TEXT

As introduced.

AN ACT concerning the allocation of critical health care resources and supplementing Title 26 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. a. Notwithstanding any other provision of law to the contrary, any critical health care resource allocation policy developed by the Department of Health shall:

(1) comply with all applicable federal civil rights laws, including, but not limited to, section 504 of the Rehabilitation Act of 1973, 29 U.S.C. s.794, Title II of the "Americans with Disabilities Act of 1990," 42 U.S.C. s.12101 et seq., section 1557 of the Patient Protection and Affordable Care Act, Pub.L.111-148, as amended by the federal "Health Care and Education Reconciliation Act of 2010," Pub.L.111-152, and the Age Discrimination Act of 1975, 42 U.S.C. ss.6101 et seq.; and

(2) be prohibited from:

(a) establishing any exclusions from eligibility to receive health care resources, or reducing the priority for eligibility to receive health care resources, based on whether an individual has a disability or based on whether the individual will, or is expected to, require additional resources, more intensive use of resources, or the use of resources for an extended duration, as a result of the individual’s disability;

(b) factoring long-term survivability into treatment decisions; or

(c) allowing reallocation of personal ventilators from an individual who ordinarily uses a ventilator in the course of daily living to another individual who is deemed by a treating practitioner to be more likely to benefit from the use of the ventilator.

b. Any critical health care resource allocation policy developed by the department shall require that general acute care hospitals licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.) make reasonable modifications to the Sequential Organ Failure Assessment score to ensure individuals with an underlying health condition do not receive a lower score when the underlying health condition is unrelated to hospital survival or unrelated to the efficacy of the health care resource under consideration.

c. Any critical health care resource allocation policy developed by the department shall prohibit general acute care hospitals and nursing homes licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.) from issuing do not resuscitate orders that apply to all patients or residents of the facility. Any do not resuscitate policy developed by a hospital or nursing home shall account for the treatment preferences of the patient or resident, to the extent they may be determined through an advance directive, POLST form, or other appropriate means.

d. As used in this section:

"Advance directive" means an advance directive for health care as defined in section 3 of P.L.1991, c.201 (C.26:2H-55).

"Critical health care resource allocation policy" means any policy related to the policies, procedures, protocols, standards, or other requirements concerning the allocation of health care resources for which demand exceeds or is anticipated to exceed supply.

"Do not resuscitate order" means a physician's written order not to attempt cardiopulmonary resuscitation in the event the patient suffers a cardiac or respiratory arrest.

"Health care resource" means any component related to the treatment of an individual for a medical or behavioral health issue, including, but not limited to, inpatient beds, treatment spaces, medications and vaccines, medical and surgical equipment, auxiliary equipment and supplies, medical devices, and health care personnel.

"POLST form" means a Practitioner Orders for Life-Sustaining Treatment form executed in accordance with the requirements of P.L.2011, c.145 (C.26:2H-129 et al.).

2. This act shall take effect immediately.

STATEMENT

This bill prohibits the inclusion or implementation of certain discriminatory policies in critical health care resource allocation policies, which are defined in the bill to mean any policy related to the policies, procedures, protocols, standards, or other requirements concerning the allocation of health care resources for which demand exceeds or is anticipated to exceed supply.

Specifically, the bill requires that any critical health care resource allocation policy developed by the Department of Health (DOH) comply with all applicable federal civil rights laws, including, but not limited to, section 504 of the Rehabilitation Act of 1973 (29 U.S.C. s.794), Title II of the "Americans with Disabilities Act of 1990" (42 U.S.C. s.12101 et seq.), Section 1557 of the Patient Protection and Affordable Care Act, Pub.L.111-148, as amended by the federal "Health Care and Education Reconciliation Act of 2010," Pub.L.111-152, and the Age Discrimination Act of 1975 (42 U.S.C. ss.6101 et seq.).

Additionally, any DOH critical health care resource allocation policy will be prohibited from: (1) establishing exclusions or deprioritizations related to eligibility to receive health care resources based on whether an individual has a disability or the individual will, or is expected to, require additional resources, more intensive use of resources, or the use of resources for an extended duration, as a result of the individual's disability; (2) factoring

long-term survivability into treatment decisions; or (3) allowing reallocation of personal ventilators from an individual who ordinarily uses a ventilator in the course of daily living to another individual who is deemed by a treating practitioner to be more likely to benefit from the use of the ventilator.

The bill requires that any critical health care resource allocation policy developed by the DOH require general acute care hospitals to make reasonable modifications to Sequential Organ Failure Assessment score to ensure individuals with an underlying health condition do not receive a lower score when the underlying health condition is unrelated to hospital survival or unrelated to the efficacy of the health care resource under consideration.

The bill requires any critical health care resource allocation policy developed by the DOH to prohibit hospitals and nursing homes from issuing do not resuscitate orders that apply to all patients or residents of the facility. Any do not resuscitate policy developed by a hospital or nursing home will be required to account for the treatment preferences of the patient or resident, to the extent they may be determined through an advance directive, a practitioner orders for life-sustaining treatment (POLST) form, or other appropriate means.