

1 SENATE BILL 71

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

4 Craig W. Brandt

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10 AN ACT

11 RELATING TO ANATOMICAL GIFTS; PROHIBITING DISCRIMINATION
12 AGAINST ANATOMICAL GIFT RECIPIENTS BASED SOLELY ON PHYSICAL OR
13 MENTAL DISABILITY; PROHIBITING INSURANCE COVERAGE
14 DISCRIMINATION AGAINST PERSONS WITH DISABILITIES RECEIVING
15 ORGAN, EYE OR TISSUE TRANSPLANTS AND ASSOCIATED CARE; DECLARING
16 AN EMERGENCY.

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18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

19 SECTION 1. Section 24-6B-1 NMSA 1978 (being Laws 2007,
20 Chapter 323, Section 1) is amended to read:

21 "24-6B-1. SHORT TITLE.--~~[Sections 1 through 25 of this~~
22 ~~act]~~ Chapter 24, Article 6B NMSA 1978 may be cited as the
23 "Jonathan Spradling Revised Uniform Anatomical Gift Act"."

24 SECTION 2. A new section of the Jonathan Spradling
25 Revised Uniform Anatomical Gift Act is enacted to read:

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1 "[NEW MATERIAL] DISCRIMINATION AGAINST RECIPIENTS BASED ON
2 DISABILITY PROHIBITED--ENFORCEMENT.--

3 A. As used in this section:

4 (1) "covered entity" means an organ
5 procurement organization, hospital, transplant hospital,
6 physician, insurance company or plan or health maintenance
7 organization; and

8 (2) "disability" means a severe chronic
9 physical or mental impairment that results in substantial
10 functional limitations in one or more of the following areas of
11 major life activity:

- 12 (a) self-care;
- 13 (b) receptive and expressive language;
- 14 (c) learning;
- 15 (d) mobility;
- 16 (e) self-determination; and
- 17 (f) capacity for independent living.

18 B. The provisions of this section apply to all
19 stages of the transplant process.

20 C. A covered entity shall not discriminate against
21 a person with a disability in the receipt of an anatomical gift
22 and shall not, solely on the basis of a person's disability:

- 23 (1) consider the person ineligible to receive
24 an anatomical gift;
- 25 (2) deny transplantation-related services;

1 (3) refuse to refer the person to an organ
2 procurement organization, transplant hospital or other related
3 specialist for the purpose of being evaluated for or receiving
4 an anatomical gift;

5 (4) refuse to place an otherwise qualified
6 recipient on an anatomical gift waiting list;

7 (5) place an otherwise qualified recipient on
8 an anatomical gift waiting list at a lower priority position
9 than the position at which the recipient would have been placed
10 if the recipient did not have a disability; or

11 (6) refuse insurance coverage for any
12 procedures associated with being evaluated for or receiving an
13 anatomical gift, including post-surgical medical care.

14 D. A covered entity may take a person's disability
15 into account when making treatment recommendations or decisions
16 only to the extent that the disability has been found by a
17 physician to be medically significant to the provision of the
18 anatomical gift after an individualized evaluation of the
19 person. If a person with a disability has the necessary
20 support system to assist the person in complying with post-
21 surgical medical requirements, a covered entity shall not
22 consider the person's inability to independently comply with
23 post-surgical medical requirements to be medically significant.

24 E. A person affected by a violation of the
25 provisions of this section may commence a civil action in

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1 district court.

2 F. Nothing in this section is intended to limit or
3 replace available remedies under the federal Americans with
4 Disabilities Act of 1990 or other applicable law."

5 SECTION 3. A new section of Chapter 59A, Article 22 NMSA
6 1978 is enacted to read:

7 "[NEW MATERIAL] ANATOMICAL GIFT NONDISCRIMINATION.--

8 A. For purposes of this section:

9 (1) "covered person" means a policyholder or
10 other person covered by a health benefit plan; and

11 (2) "organ transplant" includes parts or the
12 whole of organs, eyes or tissue.

13 B. All individual and group health insurance
14 policies delivered or issued for delivery in this state that
15 provide coverage for organ transplants and associated care
16 shall not:

17 (1) deny that coverage solely on the basis of
18 a covered person's physical or mental disability;

19 (2) deny to a covered person with a physical
20 or mental disability eligibility or continued eligibility to
21 enroll or to renew coverage under the terms of the health
22 benefit policy or plan solely for the purpose of avoiding the
23 requirements of this section;

24 (3) penalize or otherwise reduce or limit the
25 reimbursement or provide monetary or nonmonetary incentives to

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1 an attending health care provider to induce that health care
2 provider not to provide an organ transplant or associated care
3 to a covered person with a physical or mental disability; or

4 (4) reduce or limit coverage benefits to a
5 covered person with a physical or mental disability for the
6 associated care related to organ transplantation as determined
7 in consultation with the attending physician and patient."

8 SECTION 4. A new section of Chapter 59A, Article 23 NMSA
9 1978 is enacted to read:

10 "[NEW MATERIAL] ANATOMICAL GIFT NONDISCRIMINATION.--

11 A. For purposes of this section:

12 (1) "covered person" means a policyholder or
13 other person covered by a health benefit plan; and

14 (2) "organ transplant" includes parts or the
15 whole of organs, eyes or tissue.

16 B. All individual and group health insurance
17 policies delivered or issued for delivery in this state that
18 provide coverage for organ transplants or associated care shall
19 not:

20 (1) deny that coverage solely on the basis of
21 a covered person's physical or mental disability;

22 (2) deny to a covered person with a physical
23 or mental disability eligibility or continued eligibility to
24 enroll or to renew coverage under the terms of the health
25 benefit policy or plan solely for the purpose of avoiding the

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1 requirements of this section;

2 (3) penalize or otherwise reduce or limit the
3 reimbursement or provide monetary or nonmonetary incentives to
4 an attending health care provider to induce that health care
5 provider not to provide an organ transplant or associated care
6 to a covered person with a physical or mental disability; or

7 (4) reduce or limit coverage benefits to a
8 covered person with a physical or mental disability for the
9 associated care related to organ transplantation as determined
10 in consultation with the attending physician and patient."

11 SECTION 5. A new section of the Health Maintenance
12 Organization Law is enacted to read:

13 "[NEW MATERIAL] ANATOMICAL GIFT NONDISCRIMINATION.--

14 A. As used in this section, "organ transplant"
15 includes parts or the whole of organs, eyes or tissue.

16 B. A health maintenance organization contract that
17 provides coverage for organ transplants or associated care
18 shall not:

19 (1) deny coverage for organ transplantation or
20 associated care to an enrollee solely on the basis of the
21 enrollee's physical or mental disability;

22 (2) deny to an enrollee with a physical or
23 mental disability eligibility or continued eligibility to
24 enroll or to renew enrollment under the terms of the health
25 maintenance organization's benefit policy or plan solely for

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1 the purpose of avoiding the requirements of this section;

2 (3) penalize or otherwise reduce or limit the
3 reimbursement or provide monetary or nonmonetary incentives to
4 an attending health care provider to induce that health care
5 provider not to provide an organ transplant or associated care
6 to an enrollee with a disability; or

7 (4) reduce or limit benefits to an enrollee
8 with a physical or mental disability for associated care
9 related to organ transplantation as determined in consultation
10 with the attending physician and patient."

11 SECTION 6. A new section of the Nonprofit Health Care
12 Plan Law is enacted to read:

13 "[NEW MATERIAL] ANATOMICAL GIFT NONDISCRIMINATION.--

14 A. For purposes of this section:

15 (1) "covered person" means a policyholder or
16 other person covered by a health benefit plan; and

17 (2) "organ transplant" includes parts or the
18 whole of organs, eyes or tissue.

19 B. All individual and group health insurance
20 policies delivered or issued for delivery in this state that
21 provide coverage for organ transplants or associated care shall
22 not:

23 (1) deny coverage for organ transplantation or
24 associated care to a covered person solely on the basis of that
25 person's physical or mental disability;

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1 (2) deny to a covered person with a physical
2 or mental disability eligibility or continued eligibility to
3 enroll or to renew coverage under the terms of the health
4 benefit policy or plan solely for the purpose of avoiding the
5 requirements of this section;

6 (3) penalize or otherwise reduce or limit the
7 reimbursement or provide monetary or nonmonetary incentives to
8 an attending health care provider to induce that health care
9 provider not to provide an organ transplant or associated care
10 to a covered person with a physical or mental disability; or

11 (4) reduce or limit coverage benefits to a
12 covered person with a physical or mental disability for
13 associated care related to organ transplantation as determined
14 in consultation with the attending physician and patient."

15 SECTION 7. EMERGENCY.--It is necessary for the public
16 peace, health and safety that this act take effect immediately.