

SENATE BILL 158

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

INTRODUCED BY

Craig W. Brandt

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

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

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

.221523.1AIC February 9, 2022 (3:27pm)

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight↔
delete = →bold, red, highlight, strikethrough↔

underscored material = new
[bracketed material] = delete
Amendments: new = bold, blue, highlight
delete = bold, red, highlight, strikethrough

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

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

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

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

A. As used in this section:

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

(2) "disability" means a severe chronic physical or mental impairment that results in substantial functional limitations in ~~Sf11~~→~~three~~←~~Sf11~~ ~~Sf11~~→~~one~~←~~Sf11~~ or more of the following areas of major life activity:

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

B. The provisions of this section apply to all

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

stages of the transplant process.

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

(1) consider the person ineligible to receive an anatomical gift;

(2) deny transplantation-related services;

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

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

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

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

D. A covered entity may take a person's disability into account when making treatment recommendations or decisions only to the extent that the disability has been found by a physician to be medically significant to the provision of the anatomical gift after an individualized evaluation of the

underscored material = new
[bracketed material] = delete
Amendments: new = bold, blue, highlight
delete = bold, red, highlight, strikethrough

person. If a person with a disability has the necessary support system to assist the person in complying with post-surgical medical requirements, a covered entity shall not consider the person's inability to independently comply with post-surgical medical requirements to be medically significant.

E. A person affected by a violation of the provisions of this section may commence a civil action SJC→for←SJC SJC→in district court←SJC SJC→injunctive and other equitable relief against a covered entity to enforce compliance with this section. The action may be brought in the district court for the county in which the affected person resides or in which the affected person was denied an anatomical gift or referral to an organ procurement organization, a transplant hospital or a related specialist. This subsection does not create a right to compensatory or punitive damages against a covered entity←SJC.

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

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

"[NEW MATERIAL] ANATOMICAL GIFT NONDISCRIMINATION.--

A. For purposes of this section:

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

.221523.1AIC February 9, 2022 (3:27pm)

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

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

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

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

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

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

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

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

"[NEW MATERIAL] ANATOMICAL GIFT NONDISCRIMINATION.--

.221523.1AIC February 9, 2022 (3:27pm)

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

A. For purposes of this section:

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

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

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

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

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

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

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

.221523.1AIC February 9, 2022 (3:27pm)

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

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

"[NEW MATERIAL] ANATOMICAL GIFT NONDISCRIMINATION.--

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

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

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

(2) deny to an enrollee with a physical or mental disability eligibility or continued eligibility to enroll or to renew enrollment under the terms of the health maintenance organization's benefit policy or plan solely for the purpose of avoiding the requirements of this section;

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

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

.221523.1AIC February 9, 2022 (3:27pm)

underscored material = new
[bracketed material] = delete
Amendments: new = → bold, blue, highlight
delete = → bold, red, highlight, strikethrough

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

"[NEW MATERIAL] ANATOMICAL GIFT NONDISCRIMINATION.--

A. For purposes of this section:

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

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

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

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

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

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

.221523.1AIC February 9, 2022 (3:27pm)

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

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

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

- 9 -