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:

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

"24-6B-1. SHORT TITLE.--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:

"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 one 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 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 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 in
district court.

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:

"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 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 a 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 physician and patient."

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

"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 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 a 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 physician and patient."

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

"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 a 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 physician and patient."

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

"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 a 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 associated care related to organ transplantation as determined in consultation with the physician and patient."

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