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SENATE BILL 158

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

INTRODUCED BY

Craig W. Brandt

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.--~~[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:

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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 three or more of the following areas
11 of 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 for

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1 injunctive and other equitable relief against a covered entity
2 to enforce compliance with this section. The action may be
3 brought in the district court for the county in which the
4 affected person resides or in which the affected person was
5 denied an anatomical gift or referral to an organ procurement
6 organization, a transplant hospital or a related specialist.
7 This subsection does not create a right to compensatory or
8 punitive damages against a covered entity.

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

12 SECTION 3. A new section of Chapter 59A, Article 22 NMSA
13 1978 is enacted to read:

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

15 A. For purposes of this section:

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

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

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

24 (1) deny that coverage solely on the basis of
25 a covered 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 the
13 associated care related to organ transplantation as determined
14 in consultation with the attending physician and patient."

15 SECTION 4. A new section of Chapter 59A, Article 23 NMSA
16 1978 is enacted to read:

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

18 A. For purposes of this section:

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

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

23 B. All individual and group health insurance
24 policies delivered or issued for delivery in this state that
25 provide coverage for organ transplants or associated care shall

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1 not:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 A. For purposes of this section:

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

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

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

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

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

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

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

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