

1 SENATE BILL 71

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

3 INTRODUCED BY

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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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