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## FISCAL IMPACT REPORT

**SPONSOR** Brandt **ORIGINAL DATE** 2/2/2022 **LAST UPDATED** 2/9/2022 **HB** \_\_\_\_\_  
**SHORT TITLE** Anatomical Gift Discrimination **SB** 158/ec /aSJC/SFI#1  
**ANALYST** Chilton

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY22	FY23	FY24	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	NFI	NFI	NFI	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Human Services Department (HSD)

Office of the Superintendent of Insurance (OSI)

#### No Response Received

Department of Health (DOH)

### SUMMARY

#### Synopsis of Senate Floor Amendment

The Senate Floor amendment changes one word, increasing the scope of the bill. By changing the word “three” to “one,” in section 2A of the bill, the definition section, a person living with a single disability becomes eligible for coverage under the bill’s provisions.

#### Synopsis of SJC Amendment

The Senate Judiciary Committee amendment removes specific language about which district courts an aggrieved person can apply for relief, substituting just the words “in district court” for a longer section detailing in which district courts the applicant could seek relief.

#### Synopsis of Original Bill

Senate Bill 158 amends the Jonathan Spradling Revised Uniform Anatomical Gift Act, Section 24-6B-1 NMSA 1978, with the intent of prohibiting discrimination based on a prospective organ

recipient's living with a disability.

Section 1 of the bill gives its short title.

Section 2 is new material, organized in the following subsections:

- A. Definitions, including the definition of “disability” as requiring limitations in three or more areas of life activity:
  - a. Self-care;
  - b. Receptive and expressive language;
  - c. Mobility;
  - d. Learning;
  - e. Self-determination; and
  - f. Capacity for independent living.
- B. Applies the statute to all stages of the transplant process.
- C. Insurers cannot discriminate against persons with disability as defined above, in deciding who is to receive a transplanted organ or covering the cost of the transplant.
- D. A person's disability status can only be considered if the disability itself confers a higher risk of the procedure. If the person with disability is supported by others, the person with disability cannot be discriminated against on the basis of her/his ability to comply with post-surgical activities.
- E. Persons alleging a violation of the provisions of this act can apply directly to a district court for relief.
- F. Assumes that Americans with Disabilities Act provisions will also apply.

Section 3 prohibits discrimination in coverage for anatomical gifts to individual health insurance covered persons.

- A. Defines “covered person” and “organ transplant”.
- B. Individual and group health insurance plans may not discriminate in coverage of organ transplantation based on physical or mental disability status.

Section 4 prohibits discrimination in the same way in anatomical gifts to group and blanket health insurance enrolled persons as in Section 3.

Section 5 prohibits discrimination in the same way in anatomical gifts to persons in health maintenance contracts, as in Section 3.

Section 6 prohibits discrimination in the same way in anatomical gifts to persons enrolled in non-profit health plans, as in Section 3.

Section 7 establishes the bill as an emergency. As this bill contains an emergency clause, it would become effective immediately upon signature by the governor.

## **FISCAL IMPLICATIONS**

There is no appropriation in Senate Bill 158.

Neither OSI nor HSD note any fiscal impacts from this legislation to those departments.

## **SIGNIFICANT ISSUES**

The National Down Syndrome Society (NDSS; [ndss.org](http://ndss.org)) notes that currently, 30 states have laws in place that prohibit discrimination in organ transplants based on a person's disability status. New Mexico is not one of those states. NDSS goes on to say that "Despite protections under current federal law, there are documented instances of discrimination against people with disabilities when they need life-saving organ transplants. NDSS is working to pass legislation at the federal and state level to prevent discrimination based solely on disability and to provide additional legal recourse to people with Down syndrome and other disabilities when they do face discrimination in the organ transplant process."

NDSS also makes reference to federal legislation pending in Congress that would address these issues: "Introduced by Congresswomen Jaime Herrera Beutler (R-WA) and Katie Porter (D-CA) in the House and Senators Marco Rubio (R-FL) and Maggie Hassan (D-NH) in the Senate, the Charlotte Woodward Organ Transplant Discrimination Prevention Act (H.R. 1235 / S. 3301) prohibits covered health care providers from discriminating against people with disabilities seeking an organ transplant because of their disability. If passed, this legislation will uphold, clarify, and build upon rights established in the Americans with Disabilities Act of 1990, Sec. 504 of the Rehab Act and Sec. 1557 of the Affordable Care Act." The bill was introduced on February 23, 2021 in the House and on December 2, 2021, in the Senate, but neither bill has received a committee hearing to this point. The language of the federal bills is very close to the language in Senate Bill 158.

HSD notes the following regarding organ transplantation:

Organ transplants are surgical procedures in which functioning human organs are transferred to persons experiencing organ failure. Donated organs (otherwise known as anatomical gifts) are matched with persons needing organs through organ procurement organizations and the United Network for Organ Sharing.

Organ transplants are performed at organ transplant centers. Prior to a transplant, an organ transplant center evaluates the patient to ensure that the patient is suitable for the transplant. Criteria used by transplant centers can include medical history, physical examination, psychological examination, and compatibility tests.

Health care facilities are prohibited from discriminating against patients on the basis of disability by federal and state law, including the federal Americans with Disabilities Act, the federal Rehabilitation Act, and the state Law Against Discrimination.

## **TECHNICAL ISSUES**

As noted by OSI:

This law is written unlike other insurance code statutes and grants the affected individual the right to appeal directly to the district court without a hearing with OSI about Insurance Code violations.

The definition of disability to three or more substantial functional limitations severely limits the applicability of this statute. For example, as written, this statute would not be applicable where a covered entity blatantly discriminates in an organ donation eligibility decision against a deaf person solely for being deaf if they had no other limitations. [This issue was addressed in the Senate floor amendment discussed above.]

This legislation has not been applied to individuals receiving coverage under the Health Care Purchasing Act or Medicaid.

#### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Persons with disabilities could still be denied organ transplantation or coverage for organ transplantation without a narrowly-defined medical reason why that person's disability would affect the course of the transplant. If the bills introduced into Congress were passed, it would have the same effect as passage of this legislation (New Mexico SB 158).

LC/al/acv/rl/acv