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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

1 functional limitations in one or more of the following areas
2 of major life activity:

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

9 B. The provisions of this section apply to all
10 stages of the transplant process.

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

- 15 (1) consider the person ineligible to
16 receive an anatomical gift;
- 17 (2) deny transplantation-related services;
- 18 (3) refuse to refer the person to an organ
19 procurement organization, transplant hospital or other
20 related specialist for the purpose of being evaluated for or
21 receiving an anatomical gift;
- 22 (4) refuse to place an otherwise qualified
23 recipient on an anatomical gift waiting list;
- 24 (5) place an otherwise qualified recipient
25 on an anatomical gift waiting list at a lower priority

1 position than the position at which the recipient would have
2 been placed if the recipient did not have a disability; or

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

6 D. A covered entity may take a person's disability
7 into account when making treatment recommendations or
8 decisions only to the extent that the disability has been
9 found by a physician to be medically significant to the
10 provision of the anatomical gift after an individualized
11 evaluation of the person. If a person with a disability has
12 the necessary support system to assist the person in
13 complying with post-surgical medical requirements, a covered
14 entity shall not consider the person's inability to
15 independently comply with post-surgical medical requirements
16 to be medically significant.

17 E. A person affected by a violation of the
18 provisions of this section may commence a civil action in
19 district court.

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

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

25 "ANATOMICAL GIFT NONDISCRIMINATION.--

1 A. For purposes of this section:

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

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

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

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

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

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

23 (4) reduce or limit coverage benefits to a
24 covered person with a physical or mental disability for the
25 associated care related to organ transplantation as

1 determined in consultation with the physician and patient."

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

4 "ANATOMICAL GIFT NONDISCRIMINATION.--

5 A. For purposes of this section:

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

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

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

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

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

21 (3) penalize or otherwise reduce or limit
22 the reimbursement or provide monetary or nonmonetary
23 incentives to a health care provider to induce that health
24 care provider not to provide an organ transplant or
25 associated care to a covered person with a physical or mental

1 disability; or

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

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

8 "ANATOMICAL GIFT NONDISCRIMINATION.--

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

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

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

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

22 (3) penalize or otherwise reduce or limit
23 the reimbursement or provide monetary or nonmonetary
24 incentives to a health care provider to induce that health
25 care provider not to provide an organ transplant or

1 associated care to an enrollee with a disability; or

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

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

8 "ANATOMICAL GIFT NONDISCRIMINATION.--

9 A. For purposes of this section:

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

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

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

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

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

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

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

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

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