

House Bill 842 (COMMITTEE SUBSTITUTE)

By: Representatives Williams of the 145th, Jackson of the 128th, Mathis of the 144th, Gravley of the 67th, Powell of the 32nd, and others

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 1 of Title 31 of the Official Code of Georgia Annotated, relating to general provisions regarding health, so as to prohibit providers from discriminating against potential organ transplant recipients due solely to the physical or mental disability of the potential recipient; to amend Chapter 24 of Title 33 of the Official Code of Georgia Annotated, relating to insurance generally, so as to prohibit health insurers from discriminating against potential organ transplant recipients due solely to the physical or mental disability of the potential recipient; to provide for a short title; to provide for legislative findings; to provide for applicability; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

This Act shall be known and may be cited as the "Gracie's Law."

SECTION 2.

The General Assembly finds:

- (1) A mental or physical disability does not diminish a person's right to health care;
- (2) The "Americans with Disabilities Act of 1990," 42 U.S.C. Section 12101 et seq., prohibits discrimination against persons with disabilities, yet many individuals with disabilities still experience discrimination in accessing critical health care services;
- (3) In other states nationwide, individuals with mental and physical disabilities have been denied life-saving organ transplants based on assumptions that their lives are less worthy, that they are incapable of complying with posttransplant medical requirements, or that they lack adequate support systems to ensure compliance with posttransplant medical requirements;
- (4) Although organ transplant centers must consider medical and psychosocial criteria when determining if a patient is suitable to receive an organ transplant, transplant centers

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that participate in Medicare, Medicaid, or other federally funded programs are required to use patient selection criteria that result in a fair and nondiscriminatory distribution of organs; and

(5) Georgia residents in need of organ transplants are entitled to assurances that they will not encounter discrimination on the basis of a disability.

SECTION 3.

Chapter 1 of Title 31 of the Official Code of Georgia Annotated, relating to general provisions regarding health, is amended by adding a new Code section to read as follows:

"31-1-24.

(a) As used in this Code section, the term:

(1) 'Anatomical gift' means a donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation or transfusion.

(2) 'Auxiliary aids or services' means an aid or service that is used to provide information to an individual with a cognitive, developmental, intellectual, neurological, or physical disability and is available in a format or manner that allows the individual to better understand the information. An auxiliary aid or service may include:

(A) Qualified interpreters or other effective methods of making aurally delivered materials available to persons with hearing impairments;

(B) Qualified readers, taped texts, texts in accessible electronic format, or other effective methods of making visually delivered materials available to persons with visual impairments; or

(C) Supported decision-making services, including:

(i) The use of a support individual to communicate information to the individual with a disability, ascertain the wishes of the individual, or assist the individual in making decisions;

(ii) The disclosure of information to a legal guardian, authorized representative, or another individual designated by the individual with a disability for such purpose, as long as the disclosure is consistent with state and federal law, including the federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. Section 1320d et seq. and any regulations promulgated by the United States Department of Health and Human Services to implement such act;

(iii) If an individual has a court-appointed guardian or other individual responsible for making medical decisions on behalf of the individual, any measures used to ensure that the individual is included in decisions involving the individual's health care and that medical decisions are in accord with the individual's own expressed interests; and

(iv) Any other aid or service that is used to provide information in a format that is easily understandable and accessible to individuals with cognitive, neurological, developmental, or intellectual disabilities, including assistive communication technology.

(3) 'Covered entity' means:

(A) Any licensed provider of health care services, including licensed health care practitioners, hospitals, nursing facilities, laboratories, intermediate care facilities, psychiatric residential treatment facilities, institutions for individuals with intellectual or developmental disabilities, and such licensed individuals or facilities providing health care services to incarcerated persons with disabilities; and

(B) Any entity responsible for matching anatomical gift donors to potential recipients.

(4) 'Disability' has the same meaning as in the Americans with Disabilities Act of 1990, as amended by the ADA Amendments Act of 2008, at 42 U.S.C. Section 12102.

(5) 'Organ transplant' means the transplantation or transfusion of a part of a human body into the body of another for the purpose of treating or curing a medical condition.

(6) 'Qualified recipient' means an individual who has a disability and meets the essential eligibility requirements for the receipt of an anatomical gift with or without any of the following:

(A) Individuals or entities available to support and assist the individual with an anatomical gift or transplantation;

(B) Auxiliary aids or services; or

(C) Reasonable modifications to the policies, practices, or procedures of a covered entity, including modifications to allow for either or both of the following:

(i) Communication with one or more individuals or entities available to support or assist with the recipient's care and medication after surgery or transplantation; or

(ii) Consideration of support networks available to the individual, including family, friends, and home and community based services, including home and community based services funded through Medicaid, Medicare, another health plan in which the individual is enrolled, or any program or source of funding available to the individual, when determining whether the individual is able to comply with posttransplant medical requirements.

(b)(1) The provisions of this Code section shall apply to all stages of the organ transplant process.

(2) A covered entity shall not, solely on the basis of an individual's disability:

(A) Consider the individual ineligible to receive an anatomical gift or organ transplant;

(B) Deny medical services or other services related to organ transplantation, including diagnostic services, evaluation, surgery, counseling, and postoperative treatment and services;

(C) Refuse to refer the individual to a transplant center or other related specialist for the purpose of being evaluated for or receiving an organ transplant;

(D) Refuse to place a qualified recipient on an organ transplant waiting list;

(E) Place a qualified recipient on an organ transplant waiting list at a lower priority position than the position at which the individual would have been placed if the individual did not have a disability; or

(F) Refuse insurance coverage for any procedure associated with being evaluated for or receiving an anatomical gift or organ transplant, including posttransplantation and posttransfusion care.

(3) Notwithstanding paragraph (2) of this subsection, a covered entity may take an individual's disability into account when making treatment or coverage recommendations or decisions, solely to the extent that the disability has been found by a physician, following an individualized evaluation of the individual, to be medically significant to the provision of the anatomical gift.

(4) If an individual has the necessary support system to assist the individual in complying with posttransplant medical requirements, a covered entity may not consider the individual's inability to independently comply with posttransplant medical requirements to be medically significant for the purposes of paragraph (3) of this subsection.

(5) A covered entity must make reasonable modifications to its policies, practices, or procedures to allow individuals with disabilities access to transplantation related services, including diagnostic services, surgery, coverage, postoperative treatment, and counseling, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such services.

(6) A covered entity must take steps necessary to ensure that an individual with a disability is not denied medical services or other services related to organ transplantation, including diagnostic services, surgery, postoperative treatment, or counseling, due to the absence of auxiliary aids or services, unless the covered entity demonstrates that taking the steps would fundamentally alter the nature of the medical services or other services related to organ transplantation or would result in an undue burden for the covered entity.

(7) Nothing in this Code section shall be deemed to require a covered entity to make a referral or recommendation for or perform a medically inappropriate organ transplant.

(8) A covered entity shall comply with the requirements of Titles II and III of the Americans with Disabilities Act of 1990, as amended by the ADA Amendments Act of 2008, at 42 U.S.C. Section 12102.

(c)(1) Whenever it appears that a covered entity has violated or is violating any of the provisions of this Code section, the affected individual may commence a civil action for injunctive and other equitable relief against the covered entity for purposes of enforcing compliance with this Code section. The action may be brought in the superior court for the county where the affected individual resides or resided or was denied the organ transplant or referral.

(2) In an action brought under this Code section, the court must give priority on its docket and expedited review, and may grant injunctive or other equitable relief, including:

(A) Requiring auxiliary aids or services to be made available for a qualified recipient;

(B) Requiring the modification of a policy, practice, or procedure of a covered entity;

or

(C) Requiring facilities be made readily accessible to and usable by a qualified recipient.

(3) Nothing in this Code section is intended to limit or replace available remedies under the Americans with Disabilities Act of 1990 or any other applicable law.

(4) This Code section does not create a right to compensatory or punitive damages against a covered entity."

SECTION 4.

Chapter 24 of Title 33 of the Official Code of Georgia Annotated, relating to insurance generally, is amended by adding a new Code section to read as follows:

"33-24-59.27.

(a) As used in this Code section, the term:

(1) 'Attending health care provider' means the attending physician and any other person administering health care services at the time of reference who is licensed, certified, or otherwise authorized or permitted by law to administer health care services in the ordinary course of business or the practice of a profession, including any person employed by or acting for any such authorized person.

(2) 'Covered person' means a policyholder, subscriber, enrollee, member, or individual covered by a health benefit plan.

(3) 'Health benefit plan' means a policy, contract, certificate, or agreement entered into, offered, or issued by a health insurance issuer to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services. The term 'health benefit plan' shall not

167 include a plan providing coverage for only excepted benefits as specified in
168 Section 2791(c) of the federal Public Health Service Act, 42 U.S.C.A.
169 Section 300gg-91(c) and short-term policies that have a term of less than 12 months.

170 (4) 'Health insurance issuer' means an entity subject to the insurance laws and regulations
171 of this state, or subject to the jurisdiction of the Commissioner, that contracts or offers
172 to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health
173 care services, including through a health benefit plan as defined in this subsection, and
174 shall include a sickness and accident insurance company, a health maintenance
175 organization, a preferred provider organization, or any similar entity, or any other entity
176 providing a plan of health insurance or health benefits.

177 (b) A health insurance issuer that provides coverage for anatomical gifts, organ transplants,
178 or related treatment and services shall not:

179 (1) Deny coverage to a covered person solely on the basis of the person's disability;

180 (2) Deny to a patient eligibility, or continued eligibility, to enroll or to renew coverage
181 under the terms of a health benefit plan, solely for the purpose of avoiding the
182 requirements of this subsection;

183 (3) Penalize or otherwise reduce or limit the reimbursement of an attending health care
184 provider, or provide monetary or nonmonetary incentives to such a provider, to induce
185 such provider to provide care to a covered person in a manner inconsistent with this Code
186 section; or

187 (4) Reduce or limit coverage benefits to a patient for the medical or other health care
188 services related to organ transplantation performed pursuant to this Code section as
189 determined in consultation with the attending health care provider and patient.

190 (c) In the case of a health benefit plan maintained pursuant to one or more collective
191 bargaining agreements between employee representatives and one or more employers, any
192 plan amendment made pursuant to a collective bargaining agreement relating to the plan
193 which amends the plan solely to conform to any requirement imposed pursuant to this Code
194 section shall not be treated as a termination of the collective bargaining agreement.

195 (d) Nothing in this Code section shall be deemed to require a health insurance issuer to
196 provide coverage for a medically inappropriate organ transplant."

197 **SECTION 5.**

198 All laws and parts of laws in conflict with this Act are repealed.