

The House Committee on Insurance offers the following substitute to HB 842:

A BILL TO BE ENTITLED
AN ACT

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

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 style="text-align:center">**SECTION 1.**

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

13 style="text-align:center">**SECTION 2.**

14 The General Assembly finds:

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

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

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

31 **SECTION 3.**

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

34 "31-1-24.

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

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

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

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

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

47 (C) Supported decision-making services, including:

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

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

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

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

65 (3) 'Covered entity' means:

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

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

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

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

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

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

81 (B) Auxiliary aids or services; or

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

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

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

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

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

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

- 96 (B) Deny medical services or other services related to organ transplantation, including
97 diagnostic services, evaluation, surgery, counseling, and postoperative treatment and
98 services;
- 99 (C) Refuse to refer the individual to a transplant center or other related specialist for
100 the purpose of being evaluated for or receiving an organ transplant;
- 101 (D) Refuse to place a qualified recipient on an organ transplant waiting list;
- 102 (E) Place a qualified recipient on an organ transplant waiting list at a lower priority
103 position than the position at which the individual would have been placed if the
104 individual did not have a disability; or
- 105 (F) Refuse insurance coverage for any procedure associated with being evaluated for
106 or receiving an anatomical gift or organ transplant, including posttransplantation and
107 posttransfusion care.
- 108 (3) Notwithstanding paragraph (2) of this subsection, a covered entity may take an
109 individual's disability into account when making treatment or coverage recommendations
110 or decisions, solely to the extent that the disability has been found by a physician,
111 following an individualized evaluation of the individual, to be medically significant to
112 the provision of the anatomical gift.
- 113 (4) If an individual has the necessary support system to assist the individual in
114 complying with posttransplant medical requirements, a covered entity may not consider
115 the individual's inability to independently comply with posttransplant medical
116 requirements to be medically significant for the purposes of paragraph (3) of this
117 subsection.
- 118 (5) A covered entity must make reasonable modifications to its policies, practices, or
119 procedures to allow individuals with disabilities access to transplantation related services,
120 including diagnostic services, surgery, coverage, postoperative treatment, and counseling,
121 unless the entity can demonstrate that making such modifications would fundamentally
122 alter the nature of such services.
- 123 (6) A covered entity must take steps necessary to ensure that an individual with a
124 disability is not denied medical services or other services related to organ transplantation,
125 including diagnostic services, surgery, postoperative treatment, or counseling, due to the
126 absence of auxiliary aids or services, unless the covered entity demonstrates that taking
127 the steps would fundamentally alter the nature of the medical services or other services
128 related to organ transplantation or would result in an undue burden for the covered entity.
- 129 (7) Nothing in this Code section shall be deemed to require a covered entity to make a
130 referral or recommendation for or perform a medically inappropriate organ transplant.

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

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

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

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

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

145 or

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

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

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

152 **SECTION 4.**

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

155 "33-24-59.27.

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

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

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

164 (3) 'Health benefit plan' means a policy, contract, certificate, or agreement entered into,
 165 offered, or issued by a health insurance issuer to provide, deliver, arrange for, pay for, or
 166 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.