

House Bill 128

By: Representatives Williams of the 145th, Jackson of the 128th, Mathis of the 144th,
McDonald of the 26th, Powell of the 32nd, and others

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 provide for definitions; to provide for exceptions; to provide for
5 referrals and recommendations; to provide for compliance with federal requirements; to
6 provide for civil action and relief; to amend Chapter 24 of Title 33 of the Official Code of
7 Georgia Annotated, relating to insurance generally, so as to prohibit health insurers from
8 discriminating against potential organ transplant recipients due solely to the physical or
9 mental disability of the potential recipient; to provide for definitions; to provide for health
10 benefit plans and collective bargaining; to provide for applicability; to provide for a short
11 title; to provide for legislative findings; to provide for related matters; to repeal conflicting
12 laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 **SECTION 1.**

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

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SECTION 2.

16

17 The General Assembly finds that:

18 (1) A mental or physical disability does not diminish a person's right to health care;

19 (2) The Americans with Disabilities Act of 1990, 42 U.S.C. Section 12101 et seq.,
20 prohibits discrimination against persons with disabilities, yet many individuals with
21 disabilities still experience discrimination in accessing critical health care services;22 (3) In other states, individuals with physical or mental disabilities have been denied
23 lifesaving organ transplants based on assumptions that their lives are less worthy, that
24 they are incapable of complying with posttransplant medical requirements, or that they
25 lack adequate support systems to ensure compliance with posttransplant medical
26 requirements;27 (4) Although organ transplant centers shall consider medical and psychosocial criteria
28 when determining if a patient is suitable to receive an organ transplant, transplant centers
29 that participate in Medicare, Medicaid, or other federally funded programs are required
30 to use patient selection criteria that result in a fair and nondiscriminatory distribution of
31 organs; and32 (5) Georgia residents in need of organ transplants are entitled to assurances that they will
33 not encounter discrimination on the basis of a disability.**SECTION 3.**

34

35 Chapter 1 of Title 31 of the Official Code of Georgia Annotated, relating to general
36 provisions regarding health, is amended by adding a new Code section to read as follows:37 "31-1-24.38 (a) As used in this Code section, the term:39 (1) 'Anatomical gift' means a donation of any part or all of a human body conditioned
40 upon the donor's death for the purpose of transplantation or transfusion.

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

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

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

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

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

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

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

65 (iv) Any other aid or service that is used to provide information in a format that is
66 easily understandable and accessible to individuals with cognitive, neurological,

67 developmental, or intellectual disabilities, including any form of communication
68 technology.

69 (3) 'Covered entity' means:

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

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

76 (4) 'Disability' has the same meaning as provided for in the Americans with Disabilities
77 Act of 1990, as amended by the ADA Amendments Act of 2008, 42 U.S.C. Section
78 12102.

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

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

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

86 (B) Auxiliary aids or services; or

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

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

91 (ii) Consideration of support networks available to the recipient, including family,
92 friends, and home and community based services, including home and community
93 based services funded through Medicaid, Medicare, another health plan in which the

94 recipient is enrolled, or any program or source of funding available to the recipient,
95 when determining whether the recipient is able to comply with posttransplant medical
96 requirements.

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

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

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

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

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

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

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

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

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

117 (4) If an individual has the necessary support system to assist such individual in
118 complying with posttransplant medical requirements, a covered entity may not consider
119 the individual's inability to independently comply with posttransplant medical

120 requirements to be medically significant for the purposes of paragraph (3) of this
121 subsection.

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

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

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

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

138 (c)(1) When it appears that a covered entity has violated or is violating any provision of
139 this Code section, the affected individual may commence a civil action for injunctive and
140 other equitable relief against such covered entity for purposes of enforcing compliance
141 with this Code section. Such action may be brought in the district court for the county
142 where the affected individual resides or resided or was denied the organ transplant or
143 referral.

144 (2) In an action brought under paragraph (1) of this Code section, the court shall give
145 priority on its docket and expedited review, and may grant injunctive or other equitable
146 relief, including:

- 147 (A) Requiring auxiliary aids or services to be made available for a qualified recipient;
148 (B) Requiring the modification of a policy, practice, or procedure of a covered entity;
149 or
150 (C) Requiring facilities be made readily accessible to and usable by a qualified
151 recipient.
- 152 (3) Nothing in this Code section is intended to limit or replace available remedies under
153 the Americans with Disabilities Act of 1990, as amended, or any other applicable law.
- 154 (4) This Code section does not create a right to compensatory or punitive damages
155 against a covered entity."

156 **SECTION 4.**

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

159 "33-24-59.30.

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

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

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

168 (3) 'Health benefit plan' means a policy, contract, certificate, or agreement entered into,
169 offered, or issued by a health insurance issuer to provide, deliver, arrange for, pay for, or
170 reimburse any of the costs of health care services. Such term shall not include a plan
171 providing coverage for only excepted benefits as specified in Section 2791(c) of the

172 federal Public Health Service Act, 42 U.S.C.A. Section 300gg-91(c) and short-term
173 policies that have a term of less than 12 months.

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

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

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

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

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

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

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

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

201

SECTION 5.

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