

House Bill 128 (AS PASSED HOUSE AND SENATE)

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 amend Chapter 39 of
11 Title 31 of the Official Code of Georgia Annotated, relating to cardiopulmonary
12 resuscitation, so as to revise parental requirement for consent; to revise a definition; to
13 provide for a short title; to provide for legislative findings; to provide for related matters; to
14 repeal conflicting laws; and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

PART I**SECTION 1-1.**

18 This part shall be known and may be cited as "Gracie's Law."

SECTION 1-2.

19 The General Assembly finds that:

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

21 (2) The Americans with Disabilities Act of 1990, 42 U.S.C. Section 12101 et seq.,
22 prohibits discrimination against persons with disabilities, yet many individuals with
23 disabilities still experience discrimination in accessing critical health care services;

24 (3) In other states, individuals with physical or mental disabilities have been denied
25 lifesaving organ transplants based on assumptions that their lives are less worthy, that
26 they are incapable of complying with posttransplant medical requirements, or that they
27 lack adequate support systems to ensure compliance with posttransplant medical
28 requirements;

29 (4) Although organ transplant centers shall consider medical and psychosocial criteria
30 when determining if a patient is suitable to receive an organ transplant, transplant centers
31 that participate in Medicare, Medicaid, or other federally funded programs are required
32 to use patient selection criteria that result in a fair and nondiscriminatory distribution of
33 organs; and

34 (5) Georgia residents in need of organ transplants are entitled to assurances that they will
35 not encounter discrimination on the basis of a disability.
36

SECTION 1-3.

37 Chapter 1 of Title 31 of the Official Code of Georgia Annotated, relating to general
38 provisions regarding health, is amended by adding a new Code section to read as follows:
39

40 "31-1-24.

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

42 (1) 'Anatomical gift' means a donation of any part or all of a human body conditioned
43 upon the donor's death for the purpose of transplantation or transfusion.

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

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

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

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

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

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

63 (iii) When an individual with a disability has a court appointed guardian or other
64 person responsible for making medical decisions on behalf of such individual, any
65 measures used to ensure that the individual is included in decisions involving the

66 individual's health care and that medical decisions are in accord with the individual's
67 own expressed interests; and

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

72 (3) 'Covered entity' means:

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

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

79 (4) 'Disability' has the same meaning as provided for in the Americans with Disabilities
80 Act of 1990, as amended by the ADA Amendments Act of 2008, 42 U.S.C. Section
81 12102.

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

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

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

89 (B) Auxiliary aids or services; or

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

- 92 (i) Communication with one or more individuals or entities available to support or
93 assist with the recipient's care and medication after surgery or transplantation; or
94 (ii) Consideration of support networks available to the recipient, including family,
95 friends, and home and community based services, including home and community
96 based services funded through Medicaid, Medicare, another health plan in which the
97 recipient is enrolled, or any program or source of funding available to the recipient,
98 when determining whether the recipient is able to comply with posttransplant medical
99 requirements.
- 100 (b)(1) The provisions of this Code section shall apply to all stages of the organ transplant
101 process.
- 102 (2) A covered entity shall not, solely on the basis of an individual's disability:
- 103 (A) Consider the individual ineligible to receive an anatomical gift or organ transplant;
104 (B) Deny medical services or other services related to organ transplantation, including
105 diagnostic services, evaluation, surgery, counseling, and postoperative treatment and
106 services;
- 107 (C) Refuse to refer the individual to a transplant center or other related specialist for
108 the purpose of being evaluated for or receiving an organ transplant;
- 109 (D) Refuse to place a qualified recipient on an organ transplant waiting list;
- 110 (E) Place a qualified recipient on an organ transplant waiting list at a lower priority
111 position than the position at which the individual would have been placed if such
112 individual did not have a disability; or
- 113 (F) Refuse insurance coverage for any procedure associated with being evaluated for
114 or receiving an anatomical gift, including posttransplantation and posttransfusion care.
- 115 (3) Notwithstanding paragraph (2) of this subsection, a covered entity may take an
116 individual's disability into account when making treatment or coverage recommendations
117 or decisions, solely to the extent that the individual's disability has been found by a

118 physician, following an evaluation of such individual, to be medically significant to the
119 provision of the anatomical gift.

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

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

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

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

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

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

145 where the affected individual resides or resided or was denied the organ transplant or
146 referral.

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

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

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

152 or

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

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

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

159 **SECTION 1-4.**

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

162 "33-24-59.30.

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

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

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

171 (3) 'Health benefit plan' means a policy, contract, certificate, or agreement entered into,
172 offered, or issued by a health insurance issuer to provide, deliver, arrange for, pay for, or
173 reimburse any of the costs of health care services. Such term shall not include a plan
174 providing coverage for only excepted benefits as specified in Section 2791(c) of the
175 federal Public Health Service Act, 42 U.S.C.A. Section 300gg-91(c) and short-term
176 policies that have a term of less than 12 months.

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

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

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

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

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

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

197 (c) In the case of a health benefit plan maintained pursuant to one or more collective
 198 bargaining agreements between employee representatives and one or more employers, any
 199 plan amendment made pursuant to a collective bargaining agreement relating to the plan
 200 which amends the plan solely to conform to any requirement imposed pursuant to this Code
 201 section shall not be treated as a termination of the collective bargaining agreement.
 202 (d) Nothing in this Code section shall be deemed to require a health insurance issuer to
 203 provide coverage for a medically inappropriate organ transplant."

204 **PART II**

205 **SECTION 2-1.**

206 Chapter 39 of Title 31 of the Official Code of Georgia Annotated, relating to
 207 cardiopulmonary resuscitation, is amended in Code Section 31-39-2, relating to definitions,
 208 by revising paragraph (10) as follows:

209 "(10) 'Parent' means a parent who has custody of a minor, ~~or is the parent of~~ person with
 210 legal authority to act on behalf of a minor, or is the parent of an adult without
 211 decision-making capacity."

212 **SECTION 2-2.**

213 Said chapter is further amended in Code Section 31-39-4, relating to persons authorized to
 214 issue order not to resuscitate, by revising subsection (d) as follows:

215 "(d) When a minor child is a candidate for nonresuscitation, an order not to resuscitate may
 216 be issued only with the oral or written consent of the minor's parent, unless an exception
 217 applies pursuant to subsection (e) of this Code section. ~~Any parent may consent orally or~~
 218 ~~in writing to an order not to resuscitate for his or her minor child when such child is a~~
 219 ~~candidate for nonresuscitation.~~ If in the opinion of the attending physician the minor is of

220 sufficient maturity to understand the nature and effect of an order not to resuscitate, then
221 no such order shall be valid without the assent of such minor."

222

PART III

223

SECTION 3-1.

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