



HOUSE BILL 642: Down Syndrome Organ Trans. Nondiscrim. Act.

2021-2022 General Assembly

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| Committee: | | Date: | February 25, 2022 |
| Introduced by: | | Prepared by: | Jessica Boney Staff Attorney |
| Analysis of: | S.L. 2021-64 | | |

OVERVIEW: *S.L. 2021-64 creates a new Part 4A, Nondiscrimination in Organ Transplantation, in Article 16 of Chapter 130A of the General Statutes, which specifies that it is unlawful for a covered entity, on the basis of an individual's disability, to do the following:*

- *Consider an individual ineligible to receive an anatomical gift or organ transplant.*
- *Deny medical services or other services related to organ transplantation.*
- *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.*
- *Refuse to place a qualified recipient on an organ transplant waiting list.*
- *Place a qualified recipient on an organ transplant list at a lower priority position than if the individual did not have a disability.*
- *Refuse insurance coverage for any procedure associated with being evaluated for or receiving an anatomical gift or organ transplant.*

A covered entity would be permitted to take an individual's disability into account when making treatment or coverage recommendations or decisions only to the extent the disability has been found by a physician or surgeon to be medically significant to the provision of the anatomical gift. An individual affected by a covered entity's alleged violation would be allowed to bring an action for injunctive and other equitable relief against the covered entity. A covered entity would not be required to make a referral for, or perform, a medically inappropriate organ transplant.

S.L. 2021-64 prohibits insurers that offer a health benefit plan that provides coverage for anatomical gifts, organ transplants, or treatment and services related to anatomical gifts or transplants, from doing the following:

- *Denying coverage to an insured solely on the basis of that individual's disability.*
- *Denying to an individual eligibility, or continued eligibility, to enroll or to renew coverage under the terms of a health benefit plan solely for the purpose of avoiding the requirements of the statute.*
- *Attempting to induce a health care provider to provide care to an insured in a manner inconsistent with the statute in specified ways.*
- *Reducing or limiting health benefit plan coverage benefits to an insured for any necessary services related to organ transplantation.*

An insurer would not be required to provide coverage for a medically inappropriate organ transplant

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This act became effective October 1, 2021.

BILL ANALYSIS:

Section 1 titles this act as the "Down Syndrome Organ Transplant and Nondiscrimination Act."

Section 2 creates a new Part 4A. Nondiscrimination in Organ Transplantation in Article 16 of Chapter 130A of the General Statutes.

Findings, Policy and Definitions. It states legislative findings and policy, and define "anatomical gift", "auxiliary aids or services", "covered entity", "disability", "organ transplant", and "qualified recipient".

Disability Discrimination Prohibited. It is unlawful for a covered entity, on the basis of an individual's disability, to do the following:

- (1) Consider an individual ineligible to receive an anatomical gift or organ transplant.
- (2) Deny medical services or other services related to organ transplantation.
- (3) 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.
- (4) Refuse to place a qualified recipient on an organ transplant waiting list.
- (5) Place a qualified recipient on an organ transplant list at a lower priority position than if the individual did not have a disability.
- (6) Refuse insurance coverage for any procedure associated with being evaluated for or receiving an anatomical gift or organ transplant.

Covered Entity Compliance. A covered entity is permitted to take an individual's disability into account when making treatment or coverage recommendations or decisions only to the extent the disability has been found by a physician or surgeon to be medically significant to the provision of the anatomical gift. A covered entity may not consider the individual's inability to independently comply with post-transplant medical requirements to be medically significant if the individual has the necessary support system to assist the individual in compliance.

A covered entity must reasonably modify their policies, practices, or procedures to allow individuals with disabilities access to transplantation-related services, unless it demonstrates the modifications would fundamentally alter the nature of the services.

A covered entity must ensure an individual with a disability is not denied medical services or other services related to organ transplantation due to absence of auxiliary aids or services, unless the entity demonstrates that taking these steps would fundamentally alter the nature of the services or would result in an undue burden for the covered entity.

A covered entity is not required to make a referral for or perform a medically inappropriate organ transplant.

Enforcement. An individual affected by a covered entity's alleged violation of the Part is allowed to bring an action for injunctive and other equitable relief against the covered entity. The court is directed to give priority to these actions for expedited review and is barred from awarding compensatory or punitive damages for violations.

Section 2 applies to anatomical gifts that become available for transplantation on or after October 1, 2021.

Section 3 creates a new section in Article 3 of Chapter 58 of the General Statutes.

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Organ Transplant Coverage Definitions. It creates definitions for "anatomical gift", "disability", "health benefit plan", "insurer", and "transplant".

Organ Transplant Coverage. Insurers who offer a health benefit plan that provides coverage for anatomical gifts, organ transplants, or treatment and services related to anatomical gifts or transplants, are prohibited from doing the following:

- (1) Denying coverage to an insured solely on the basis of that individual's disability.
- (2) Denying coverage to an individual eligibility, or continued eligibility, to enroll or to renew enrollment coverage under the terms of a health benefit plan solely for the purpose of avoiding the requirements of the statute.
- (3) Attempting to induce a health care provider to provide care to an insured in a manner inconsistent with the statute in specified ways.
- (4) Reducing or limiting health benefit plan coverage benefits to an insured for any necessary services related to organ transplantation.

An insurer is not required to provide coverage for a medically inappropriate organ transplant.

The remainder of G.S. 58-3-102 would be repealed, removing the definition for insurer.

Section 3 applies to insurance contracts entered into, renewed, or amended on or after October 1, 2021.

EFFECTIVE DATE: This act became effective October 1, 2021.