

By: Senator(s) England, Wiggins, Boyd,
Thompson

To: Public Health and
Welfare

SENATE BILL NO. 2458

1 AN ACT TO ENACT COLE'S LAW TO PROHIBIT DISCRIMINATION AGAINST
2 RECIPIENTS OF AN ANATOMICAL GIFT OR ORGAN TRANSPLANT BASED ON
3 DISABILITY; TO DEFINE CERTAIN TERMS USED IN THE ACT; TO PROVIDE
4 REQUIREMENTS FOR COVERED ENTITIES; TO PROVIDE CIVIL REMEDIES FOR
5 VIOLATIONS OF THE ACT; TO PROHIBIT CERTAIN ACTS OF HEALTH
6 INSURERS; AND FOR RELATED PURPOSES.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

8 **SECTION 1.** This act shall be known and may be cited as
9 "Cole's Law."

10 **SECTION 2.** The Legislature finds that:

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

13 (b) The "Americans with Disabilities Act of 1990," 42
14 U.S.C. Section 12101, prohibits discrimination against persons
15 with disabilities, yet many individuals with disabilities still
16 experience discrimination in accessing critical health care
17 services;

18 (c) In other states nationwide, individuals with mental
19 and physical disabilities have been denied lifesaving organ
20 transplants based on assumptions that their lives are less worthy,



21 that they are incapable of complying with post-transplant medical
22 requirements, or that they lack adequate support systems to ensure
23 compliance with post-transplant medical requirements;

24 (d) Although organ transplant centers must consider
25 medical and psychosocial criteria when determining if a patient is
26 suitable to receive an organ transplant, transplant centers that
27 participate in Medicare, Medicaid and other federally funded
28 programs are required to use patient selection criteria that
29 results in a fair and nondiscriminatory distribution of organs;
30 and

31 (e) Mississippi residents in need of organ transplants
32 are entitled to assurances that they will not encounter
33 discrimination on the basis of a disability.

34 **SECTION 3.** For purposes of this act, the following terms
35 shall have the following meanings unless the context clearly
36 indicates otherwise:

37 (a) "Disability" has the meaning stated in the
38 Americans with Disabilities Act of 1990, as amended by the ADA
39 Amendments Act of 2008, at 42 U.S.C. Section 12102.

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



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

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

53 (iii) Supported decision-making services,
54 including:

55 1. The use of a support individual to
56 communicate information to the individual with a disability,
57 ascertain the wishes of the individual, or assist the individual
58 in making decisions;

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

67 3. If an individual has a court-appointed
68 guardian or other individual responsible for making medical
69 decisions on behalf of the individual, any measures used to ensure
70 that the individual is included in decisions involving the



71 individual's health care and that medical decisions are in
72 accordance with the individual's own expressed interests; and

73 4. Any other aid or service that is used to
74 provide information in a format that is easily understandable and
75 accessible to individuals with cognitive, neurological,
76 developmental or intellectual disabilities, including assistive
77 communication technology.

78 (c) "Qualified recipient" means an individual who has a
79 disability and meets the essential eligibility requirements for
80 the receipt of an anatomical gift with or without any of the
81 following:

82 (i) Individuals or entities available to support
83 and assist the individual with an anatomical gift or
84 transplantation;

85 (ii) Auxiliary aids or services;

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

89 1. Communication with one or more individuals
90 or entities available to support or assist with the recipient's
91 care and medication after surgery or transplantation; and/or

92 2. Consideration of support networks
93 available to the individual, including family, friends, and home
94 and community-based services, including home and community-based
95 services funded through Medicaid, Medicare, another health plan in



96 which the individual is enrolled, or any program or source of
97 funding available to the individual, when determining whether the
98 individual is able to comply with post-transplant medical
99 requirements.

100 (d) "Anatomical gift" means a donation of all or part
101 of a human body, including but not limited to eye or tissue, to
102 take effect after the donor's death for the purpose of
103 transplantation or transfusion.

104 (e) "Organ transplant" means the transplantation or
105 transfusion of a part of a human body into the body of another for
106 the purpose of treating or curing a medical condition.

107 (f) "Covered entity" means:

108 (i) Any licensed provider of health care services,
109 including licensed health care practitioners, hospitals, nursing
110 facilities, laboratories, intermediate care facilities,
111 psychiatric residential treatment facilities, institutions for
112 individuals with intellectual or developmental disabilities, and
113 prison health centers; or

114 (ii) Any entity responsible for matching
115 anatomical gift donors to potential recipients.

116 **SECTION 4.** (1) The provisions of this section shall apply
117 to all stages of the organ transplant process.

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



120 (a) Consider the individual ineligible to receive an
121 anatomical gift or organ transplant;

122 (b) Deny medical services or other services related to
123 organ transplantation, including diagnostic services, evaluation,
124 surgery, counseling, post-operative treatment and services;

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

128 (d) Refuse to place a qualified recipient on an organ
129 transplant waiting list;

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

134 (f) Refuse insurance coverage for any procedure
135 associated with being evaluated for or receiving an anatomical
136 gift or organ transplant, including post-transplantation and
137 post-transfusion care.

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



145 (4) If an individual has the necessary support system to
146 assist the individual in complying with post-transplant medical
147 requirements, a covered entity may not consider the individual's
148 inability to independently comply with post-transplant medical
149 requirements to be medically significant for the purposes of
150 subsection (3) of this section.

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

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

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



170 (8) A covered entity shall otherwise comply with the
171 requirements of Titles II and III of the Americans with
172 Disabilities Act of 1990, as amended by the ADA Amendments Act of
173 2008.

174 **SECTION 5.** (1) Whenever it appears that a covered entity
175 has violated or is violating any of the provisions of
176 this act, the affected individual may commence a civil action for
177 injunctive and other equitable relief against the covered entity
178 for purposes of enforcing compliance with this act. The action
179 may be brought in the circuit or county court for the county where
180 the affected individual resides or resided or was denied the organ
181 transplant or referral.

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

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

187 (b) Requiring the modification of a policy, practice or
188 procedure of a covered entity; or

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

191 (3) Nothing in this act is intended to limit or replace
192 available remedies under the ADA or any other applicable law.

193 (4) This act does not create a right to compensatory or
194 punitive damages against a covered entity.



195 **SECTION 6.** (1) For purposes of this section, the following
196 terms shall have the following meanings unless the context clearly
197 indicates otherwise:

198 (a) "Covered person" means a policyholder, subscriber,
199 enrollee, member or individual covered by a health benefit plan.

200 (b) "Health benefit plan" means a policy, contract,
201 certificate or agreement entered into, offered, or issued by a
202 health insurance issuer to provide, deliver, arrange for, pay for,
203 or reimburse any of the costs of health care services. "Health
204 benefit plan" shall not include a plan providing coverage for
205 excepted benefits and short-term policies that have a term of less
206 than twelve (12) months.

207 (c) "Health insurance issuer" means an entity subject
208 to the insurance laws and regulations of this state, or subject to
209 the jurisdiction of the Commissioner of Insurance, that contracts
210 or offers to contract to provide, deliver, arrange for, pay for,
211 or reimburse any of the costs of health care services, including
212 through a health benefit plan as defined in this section, and
213 shall include a sickness and accident insurance company, a health
214 maintenance organization, a preferred provider organization or any
215 similar entity or any other entity providing a plan of health
216 insurance or health benefits.

217 (2) A health insurance issuer that provides coverage for
218 anatomical gifts, organ transplants or related treatments and
219 services shall not:



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

222 (b) Deny to a patient eligibility, or continued
223 eligibility, to enroll or to renew coverage under the terms of the
224 health benefit plan, solely for the purpose of avoiding the
225 requirements of this section;

226 (c) Penalize or otherwise reduce or limit the
227 reimbursement of an attending provider, or provide monetary or
228 nonmonetary incentives to an attending provider, to induce such
229 provider to provide care to an insured or enrollee in a manner
230 inconsistent with this section; or

231 (d) Reduce or limit coverage benefits to a patient for
232 the medical services or other services related to organ
233 transplantation performed pursuant to this section as determined
234 in consultation with the attending physician and patient.

235 (3) In the case of a health benefit plan maintained pursuant
236 to one or more collective bargaining agreements between employee
237 representatives and one or more employers, any plan amendment made
238 pursuant to a collective bargaining agreement relating to the
239 plan, which amends the plan solely to conform to any requirement
240 imposed pursuant to this section, shall not be treated as a
241 termination of the collective bargaining agreement.

242 (4) Nothing in this section shall be deemed to require a
243 health insurance issuer to provide coverage for a medically
244 inappropriate organ transplant.



245 **SECTION 7.** The Legislature hereby declares that the life of
246 a person with a disability who needs an organ transplant is as
247 worthy and valuable as the life of a person with no disability who
248 needs the same medical service.

249 **SECTION 8.** This act shall take effect and be in force from
250 and after its passage.

