

118TH CONGRESS  
1ST SESSION

# H. R. 2706

To prohibit discrimination on the basis of mental or physical disability in cases of organ transplants.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 19, 2023

Mrs. CAMMACK (for herself, Mrs. DINGELL, Mr. SESSIONS, Ms. WASSERMAN SCHULTZ, and Mr. ISSA) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To prohibit discrimination on the basis of mental or physical disability in cases of organ transplants.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Charlotte Woodward  
5 Organ Transplant Discrimination Prevention Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) The Americans with Disabilities Act of  
9 1990, section 504 of the Rehabilitation Act of 1973,  
10 and section 1557 of the Patient Protection and Af-

1        affordable Care Act prohibit discrimination against in-  
2        dividuals with disabilities in organ transplantation  
3        and the allocation of organs.

4            (2) Despite those prohibitions, there are find-  
5        ings and cases that show, as is documented by the  
6        National Council on Disability and others, that indi-  
7        viduals with disabilities are being denied organ  
8        transplants and related services based solely on the  
9        fact that those individuals have a disability.

10           (3) 34 States have crafted State-level policy to  
11        prohibit organ transplant discrimination against in-  
12        dividuals with disabilities. Federal action, however,  
13        is required to protect individuals with disabilities  
14        and to enforce existing law regardless of the State  
15        in which they live.

16           (4) The current situation, with continuing cases  
17        of discrimination against individuals with disabili-  
18        ties, calls for further clarity by Congress about  
19        which actions constitute discrimination under cur-  
20        rent law, which entities are covered, and the rem-  
21        edies available to individuals experiencing potential  
22        discrimination.

23           (5) Licensed providers of health care services  
24        that provide organ transplants and related services  
25        in exchange for medical fees are engaging in an eco-

1        nomic transaction with patients that occurs in or  
2        substantially impacts interstate commerce.

3            (6) In the national administration of organ allo-  
4        cation in the United States, organs are transported  
5        across State lines for transplantation procedures.

6            (7) Discrimination in organ transplantation  
7        limits individuals with disabilities from participating  
8        in health care transactions in a manner that allows  
9        equal access to interstate commerce.

10          (8) The existence of discrimination against indi-  
11        viduals with disabilities in the provision of organ  
12        transplantation and related services burdens the flow  
13        of organs through legal channels of interstate com-  
14        merce.

15 **SEC. 3. DEFINITIONS.**

16        In this Act:

17            (1) **AUXILIARY AIDS AND SERVICES.**—The term  
18        “auxiliary aids and services” includes—

19            (A) qualified interpreters or other effective  
20        methods of making aurally delivered materials  
21        available to individuals with a hearing impair-  
22        ment;

23            (B) qualified readers, taped texts, or other  
24        effective methods of making visually delivered

1 materials available to individuals with a visual  
2 impairment;

3 (C) information in a format that is acces-  
4 sible for individuals with a cognitive, neuro-  
5 logical, developmental, or intellectual disability;

6 (D) supported decision-making services;  
7 and

8 (E) acquisition or modification of equip-  
9 ment or devices.

10 (2) COVERED ENTITY.—The term “covered en-  
11 tity” means any licensed provider of health care  
12 services (including licensed health care practitioners,  
13 hospitals, nursing facilities, laboratories, inter-  
14 mediate care facilities, psychiatric residential treat-  
15 ment facilities, institutions for individuals with intel-  
16 lectual or developmental disabilities, and prison  
17 health centers), and any transplant hospital (as de-  
18 fined in section 121.2 of title 42, Code of Federal  
19 Regulations or a successor regulation), that—

20 (A) is in interstate commerce; or

21 (B) provides health care services in a man-  
22 ner that—

23 (i) substantially affects or has a sub-  
24 stantial relation to interstate commerce; or

1 (ii) includes use of an instrument (in-  
2 cluding an instrument of transportation or  
3 communication) of interstate commerce.

4 (3) DISABILITY.—The term “disability” has the  
5 meaning given the term in section 3 of the Ameri-  
6 cans with Disabilities Act of 1990 (42 U.S.C.  
7 12102).

8 (4) HUMAN ORGAN.—The term “human organ”  
9 has the meaning given the term in section 301(c) of  
10 the National Organ Transplant Act (42 U.S.C.  
11 274e(c)).

12 (5) MATCHING ENTITY.—The term “matching  
13 entity” means an entity described in section 4.

14 (6) ORGAN TRANSPLANT.—The term “organ  
15 transplant” means the transplantation or trans-  
16 fusion of a donated human organ into the body of  
17 another human for the purpose of treating a medical  
18 condition.

19 (7) QUALIFIED INDIVIDUAL.—The term “quali-  
20 fied individual” means an individual who, with or  
21 without a support network, provision of auxiliary  
22 aids and services, or reasonable modifications to  
23 policies or practices, meets eligibility requirements  
24 for the receipt of a human organ.

1           (8) REASONABLE MODIFICATIONS TO POLICIES  
2           OR PRACTICES.—The term “reasonable modifications  
3           to policies or practices” includes—

4                   (A) communication with persons respon-  
5                   sible for supporting a qualified individual with  
6                   postsurgical or other care following an organ  
7                   transplant or related services, including support  
8                   with medication; and

9                   (B) consideration, in determining whether  
10                  a qualified individual will be able to comply  
11                  with health requirements following an organ  
12                  transplant or receipt of related services, of sup-  
13                  port networks available to the qualified indi-  
14                  vidual, including family, friends, and providers  
15                  of home and community-based services, includ-  
16                  ing home and community-based services funded  
17                  through the Medicare or Medicaid program  
18                  under title XVIII or XIX, respectively, of the  
19                  Social Security Act (42 U.S.C. 1395 et seq.,  
20                  1396 et seq.), another health plan in which the  
21                  qualified individual is enrolled, or any program  
22                  or source of funding available to the qualified  
23                  individual.

1           (9) RELATED SERVICES.—The term “related  
2 services” means services related to an organ trans-  
3 plant that consist of—

4                   (A) evaluation;

5                   (B) counseling;

6                   (C) treatment, including postoperative  
7 treatment, and care;

8                   (D) provision of information; and

9                   (E) any other service recommended or re-  
10 quired by a physician.

11           (10) SECRETARY.—The term “Secretary”  
12 means the Secretary of Health and Human Services.

13           (11) SUPPORTED DECISION MAKING.—The term  
14 “supported decision making” means the use of a  
15 support person to assist a qualified individual in  
16 making health care decisions, communicate informa-  
17 tion to the qualified individual, or ascertain a quali-  
18 fied individual’s wishes. Such term includes—

19                   (A) the inclusion of the individual’s attor-  
20 ney-in-fact or health care proxy, or any person  
21 of the individual’s choice, in communications  
22 about the individual’s health care;

23                   (B) permitting the individual to designate  
24 a person of the individual’s choice for the pur-  
25 poses of supporting that individual in commu-

1           nating, processing information, or making  
2           health care decisions;

3           (C) providing auxiliary aids and services  
4           described in subparagraph (A), (B), (C), or (E)  
5           of paragraph (1) to facilitate the individual's  
6           ability to communicate and process health-re-  
7           lated information, including providing use of as-  
8           sistive communication technology;

9           (D) providing health information to per-  
10          sons designated by the individual, consistent  
11          with the regulations promulgated under section  
12          264(c) of the Health Insurance Portability and  
13          Accountability Act of 1996 (42 U.S.C. 1320d-  
14          2 note) and other applicable laws and regula-  
15          tions governing disclosure of health informa-  
16          tion;

17          (E) providing health information in a for-  
18          mat that is readily understandable by the indi-  
19          vidual; and

20          (F) working with a court-appointed guard-  
21          ian or other person responsible for making  
22          health care decisions on behalf of the individual,  
23          to ensure that the individual is included in deci-  
24          sions involving the health care of the individual



1           and that health care decisions are in accordance  
2           with the individual’s own expressed interests.

3           (12) SUPPORT NETWORK.—The term “support  
4           network” means, with respect to a qualified indi-  
5           vidual, one or more people who are—

6                   (A) selected by the qualified individual or  
7                   by the qualified individual and the guardian of  
8                   the qualified individual, to provide assistance to  
9                   the qualified individual or guidance to that  
10                  qualified individual in understanding issues,  
11                  making plans for the future, or making complex  
12                  decisions; and

13                   (B) who may include the family members,  
14                   friends, unpaid supporters, members of the reli-  
15                   gious congregation, and appropriate personnel  
16                   at a community center, of or serving the quali-  
17                  fied individual.

18 **SEC. 4. PROHIBITION OF DISCRIMINATORY POLICY.**

19           An entity who receives a contract under section 372  
20           of the Public Health Service Act (42 U.S.C. 274) to match  
21           human organs and individuals, and otherwise carry out  
22           the functions described in subsection (b) of that section,  
23           shall not issue policies, recommendations, or other memo-  
24           randa that would prohibit, or otherwise hinder, a qualified

1 individual's access to an organ transplant solely on the  
2 basis of that individual's disability.

3 **SEC. 5. PROHIBITION OF DISCRIMINATION.**

4 (a) IN GENERAL.—Subject to subsection (b), a cov-  
5 ered entity may not, solely on the basis of a qualified indi-  
6 vidual's disability—

7 (1) determine that the individual is ineligible to  
8 receive an organ transplant or related services;

9 (2) deny the individual an organ transplant or  
10 related services;

11 (3) refuse to refer the individual to an organ  
12 transplant center or other related specialist for the  
13 purpose of receipt of an organ transplant or other  
14 related services; or

15 (4) refuse to place the individual on an organ  
16 transplant waiting list.

17 (b) EXCEPTION.—

18 (1) IN GENERAL.—

19 (A) MEDICALLY SIGNIFICANT DISABIL-  
20 ITIES.—Notwithstanding subsection (a), a cov-  
21 ered entity may take a qualified individual's  
22 disability into account when making a health  
23 care treatment or coverage recommendation or  
24 decision, solely to the extent that the disability  
25 has been found by a physician, following an in-

1           dividualized evaluation of the potential recipi-  
2           ent, to be medically significant to the receipt of  
3           the organ transplant or related services, as the  
4           case may be.

5                   (B) CONSTRUCTION.—Subparagraph (A)  
6           shall not be construed to require a referral or  
7           recommendation for, or the performance of, a  
8           medically inappropriate organ transplant or  
9           medically inappropriate related services.

10           (2) CLARIFICATION.—If a qualified individual  
11           has the necessary support network to provide a rea-  
12           sonable assurance that the qualified individual will  
13           be able to comply with health requirements following  
14           an organ transplant or receipt of related services, as  
15           the case may be, the qualified individual’s inability  
16           to independently comply with those requirements  
17           may not be construed to be medically significant for  
18           purposes of paragraph (1).

19           (c) REASONABLE MODIFICATIONS.—A covered entity  
20           shall make reasonable modifications to policies or practices  
21           (including procedures) of such entity if such modifications  
22           are necessary to make an organ transplant or related serv-  
23           ices available to qualified individuals with disabilities, un-  
24           less the entity can demonstrate that making such modi-

1 fications would fundamentally alter the nature of such  
2 policies or practices.

3 (d) CLARIFICATIONS.—

4 (1) NO DENIAL OF SERVICES BECAUSE OF AB-  
5 SENCE OF AUXILIARY AIDS AND SERVICES.—For  
6 purposes of this section, a covered entity shall take  
7 such steps as may be necessary to ensure that a  
8 qualified individual with a disability is not denied a  
9 procedure associated with the receipt of an organ  
10 transplant or related services, because of the absence  
11 of auxiliary aids and services, unless the covered en-  
12 tity can demonstrate that taking such steps would  
13 fundamentally alter the nature of the procedure  
14 being offered or would result in an undue burden on  
15 the entity.

16 (2) COMPLIANCE WITH OTHER LAW.—Nothing  
17 in this section shall be construed—

18 (A) to prevent a covered entity from pro-  
19 viding organ transplants or related services at  
20 a level that is greater than the level that is re-  
21 quired by this section; or

22 (B) to limit the rights of an individual with  
23 a disability under, or to replace or limit the  
24 scope of obligations imposed by, the Americans  
25 with Disabilities Act of 1990 (42 U.S.C. 12101

1 et seq.) including the provisions added to such  
2 Act by the ADA Amendments Act of 2008, sec-  
3 tion 504 of the Rehabilitation Act of 1973 (29  
4 U.S.C. 794), section 1557 of the Patient Pro-  
5 tection and Affordable Care Act (42 U.S.C.  
6 18116), or any other applicable law.

7 (e) ENFORCEMENT.—

8 (1) IN GENERAL.—Any individual who alleges  
9 that a qualified individual was subject to a violation  
10 of this section by a covered entity—

11 (A) may bring a claim regarding the alle-  
12 gation to the Office for Civil Rights of the De-  
13 partment of Health and Human Services, for  
14 expedited resolution; and

15 (B) whether or not such a claim is brought  
16 under subparagraph (A) or a violation is found  
17 pursuant to subparagraph (A), may bring a  
18 civil action in a district court of the United  
19 States for injunctive or other equitable relief,  
20 including the relief described in paragraph (2),  
21 against such covered entity to obtain compli-  
22 ance of such covered entity with this section.

23 (2) RELIEF AVAILABLE.—The injunctive and  
24 equitable relief available in a civil action brought

1 under paragraph (1)(B), with respect to a covered  
2 entity, includes—

3 (A) requiring auxiliary aids and services to  
4 be made available by the entity involved;

5 (B) requiring reasonable modifications to  
6 policies or practices (including procedures) of  
7 such entity; or

8 (C) requiring that a facility of such entity  
9 be made readily accessible and usable.

10 (3) EXPEDITED REVIEW.—In the case of a civil  
11 action brought under paragraph (1)(B), with respect  
12 to a covered entity, the district court in which such  
13 action is brought shall advance on its docket and ex-  
14 pedite review and disposition of such action.

15 (4) RULE OF CONSTRUCTION.—Nothing in this  
16 subsection is intended to limit or replace available  
17 remedies under the Americans with Disabilities Act  
18 of 1990 (42 U.S.C. 12101 et seq.) or any other ap-  
19 plicable law.

20 **SEC. 6. APPLICATION TO EACH PART OF PROCESS.**

21 The provisions of this Act—

22 (1) that apply to an organ transplant, also  
23 apply to the evaluation and listing of a qualified in-  
24 dividual, and to the organ transplant and post-

1 organ-transplant treatment of such an individual;  
2 and

3 (2) that apply to related services, also apply to  
4 the process for receipt of related services by such an  
5 individual.

6 **SEC. 7. EFFECT ON OTHER LAWS.**

7 Nothing in this Act shall be construed to supersede  
8 any provision of any State or local law that provides great-  
9 er rights to qualified individuals with respect to organ  
10 transplants than the rights established under this Act.

○