

Committee Print

(SHOWING THE TEXT OF H.R. 2706, AS FAVORABLY FORWARDED
BY THE SUBCOMMITTEE ON HEALTH ON MARCH 12, 2024)

118TH CONGRESS
1ST SESSION

H. R. 2706

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

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

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. DEFINITIONS.**

7 In this Act:

1 (1) AUXILIARY AIDS AND SERVICES.—The term
2 “auxiliary aids and services” has the meaning given
3 the term in section 4 of the Americans with Disabil-
4 ities Act of 1990 (42 U.S.C. 12103).

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

15 (A) is in interstate commerce; or

16 (B) provides health care services in a man-
17 ner that—

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

20 (ii) includes use of an instrument (in-
21 cluding an instrument of transportation or
22 communication) of interstate commerce.

23 (3) DISABILITY.—The term “disability” has the
24 meaning given the term in section 3 of the Ameri-

1 cans with Disabilities Act of 1990 (42 U.S.C.
2 12102).

3 (4) HUMAN ORGAN.—The term “human organ”
4 has the meaning given the term in section 301(c) of
5 the National Organ Transplant Act (42 U.S.C.
6 274e(c)).

7 (5) ORGAN TRANSPLANT.—The term “organ
8 transplant” means the transplantation or trans-
9 fusion of a donated human organ into the body of
10 another human for the purpose of treating a medical
11 condition.

12 (6) QUALIFIED INDIVIDUAL.—The term “quali-
13 fied individual” means an individual who, with or
14 without a support network, provision of auxiliary
15 aids and services, or reasonable modifications to
16 policies or practices, meets eligibility requirements
17 for the receipt of a human organ.

18 (7) REASONABLE MODIFICATIONS TO POLICIES
19 OR PRACTICES.—The term “reasonable modifications
20 to policies or practices” includes—

21 (A) communication with persons respon-
22 sible for supporting a qualified individual with
23 postsurgical or other care following an organ
24 transplant or related services, including support
25 with medication;

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

16 (C) the use of supported decision-making,
17 when needed, by a qualified individual.

18 (8) RELATED SERVICES.—The term “related
19 services” means services related to an organ trans-
20 plant that consist of—

21 (A) evaluation;

22 (B) counseling;

23 (C) treatment, including postoperative
24 treatment, and care;

25 (D) provision of information; and

1 (E) any other service recommended or re-
2 quired by a physician.

3 (9) SUPPORTED DECISION-MAKING.—The term
4 “supported decision-making” means the use of a
5 support person to assist a qualified individual in
6 making health care decisions, communicate informa-
7 tion to the qualified individual, or ascertain a quali-
8 fied individual’s wishes. Such term includes—

9 (A) the inclusion of the individual’s attor-
10 ney-in-fact or health care proxy, or any person
11 of the individual’s choice, in communications
12 about the individual’s health care;

13 (B) permitting the individual to designate
14 a person of the individual’s choice for the pur-
15 poses of supporting that individual in commu-
16 nicating, processing information, or making
17 health care decisions;

18 (C) providing auxiliary aids and services to
19 facilitate the individual’s ability to communicate
20 and process health-related information, includ-
21 ing providing use of assistive communication
22 technology;

23 (D) providing health information to per-
24 sons designated by the individual, consistent
25 with the regulations promulgated under section

1 264(c) of the Health Insurance Portability and
2 Accountability Act of 1996 (42 U.S.C. 1320d–
3 2 note) and other applicable laws and regula-
4 tions governing disclosure of health informa-
5 tion;

6 (E) providing health information in a for-
7 mat that is readily understandable by the indi-
8 vidual; and

9 (F) working with a court-appointed guard-
10 ian or other person responsible for making
11 health care decisions on behalf of the individual,
12 to ensure that the individual is included in deci-
13 sions involving the health care of the individual
14 and that health care decisions are in accordance
15 with the individual’s own expressed interests.

16 (10) SUPPORT NETWORK.—The term “support
17 network” means, with respect to a qualified indi-
18 vidual, one or more people who are—

19 (A) selected by the qualified individual or
20 by the qualified individual and the guardian of
21 the qualified individual, to provide assistance to
22 the qualified individual or guidance to that
23 qualified individual in understanding issues,
24 making plans for the future, or making complex
25 decisions; and

1 (B) who may include the family members,
2 friends, unpaid supporters, members of the reli-
3 gious congregation, and appropriate personnel
4 at a community center, of or serving the quali-
5 fied individual.

6 **SEC. 3. PROHIBITION OF DISCRIMINATORY POLICY.**

7 The board of directors described in section
8 372(b)(1)(B) of the Public Health Service Act (42 U.S.C.
9 274(b)(1)(B)) shall not issue policies, recommendations,
10 or other memoranda that would prohibit, or otherwise
11 hinder, a qualified individual's access to an organ trans-
12 plant solely on the basis of that individual's disability.

13 **SEC. 4. PROHIBITION OF DISCRIMINATION.**

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

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

19 (2) deny the individual an organ transplant or
20 related services;

21 (3) refuse to refer the individual to an organ
22 transplant center or other related specialist for the
23 purpose of receipt of an organ transplant or other
24 related services; or

1 (4) refuse to place the individual on an organ
2 transplant waiting list.

3 (b) EXCEPTION.—

4 (1) IN GENERAL.—

5 (A) MEDICALLY SIGNIFICANT DISABIL-
6 ITIES.—Notwithstanding subsection (a), a cov-
7 ered entity may take a qualified individual's
8 disability into account when making a health
9 care treatment or coverage recommendation or
10 decision, solely to the extent that the disability
11 has been found by a physician, following an in-
12 dividualized evaluation of the potential recipi-
13 ent, to be medically significant to the receipt of
14 the organ transplant or related services, as the
15 case may be.

16 (B) CONSTRUCTION.—Subparagraph (A)
17 shall not be construed to require a referral or
18 recommendation for, or the performance of, a
19 medically inappropriate organ transplant or
20 medically inappropriate related services.

21 (2) CLARIFICATION.—If a qualified individual
22 has the necessary support network to provide a rea-
23 sonable assurance that the qualified individual will
24 be able to comply with health requirements following
25 an organ transplant or receipt of related services, as

1 the case may be, the qualified individual's inability
2 to independently comply with those requirements
3 may not be construed to be medically significant for
4 purposes of paragraph (1).

5 (c) REASONABLE MODIFICATIONS.—A covered entity
6 shall make reasonable modifications to policies or practices
7 (including procedures) of such entity if such modifications
8 are necessary to make an organ transplant or related serv-
9 ices available to qualified individuals with disabilities, un-
10 less the entity can demonstrate that making such modi-
11 fications would fundamentally alter the nature of such
12 policies or practices.

13 (d) CLARIFICATIONS.—

14 (1) NO DENIAL OF SERVICES BECAUSE OF AB-
15 SENCE OF AUXILIARY AIDS AND SERVICES.—For
16 purposes of this section, a covered entity shall take
17 such steps as may be necessary to ensure that a
18 qualified individual with a disability is not denied a
19 procedure associated with the receipt of an organ
20 transplant or related services, because of the absence
21 of auxiliary aids and services, unless the covered en-
22 tity can demonstrate that taking such steps would
23 fundamentally alter the nature of the procedure
24 being offered or would result in an undue burden on
25 the entity.

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

3 (A) to prevent a covered entity from pro-
4 viding organ transplants or related services at
5 a level that is greater than the level that is re-
6 quired by this section; or

7 (B) to limit the rights of an individual with
8 a disability under, or to replace or limit the
9 scope of obligations imposed by, the Americans
10 with Disabilities Act of 1990 (42 U.S.C. 12101
11 et seq.) including the provisions added to such
12 Act by the ADA Amendments Act of 2008, sec-
13 tion 504 of the Rehabilitation Act of 1973 (29
14 U.S.C. 794), section 1557 of the Patient Pro-
15 tection and Affordable Care Act (42 U.S.C.
16 18116), or any other applicable law.

17 (e) ENFORCEMENT.—

18 (1) IN GENERAL.—Any individual who alleges
19 that a qualified individual was subject to a violation
20 of this section by a covered entity may bring a claim
21 regarding the allegation to the Office for Civil
22 Rights of the Department of Health and Human
23 Services, for expedited resolution.

24 (2) RULE OF CONSTRUCTION.—Nothing in this
25 subsection is intended to limit or replace available

1 remedies under the Americans with Disabilities Act
2 of 1990 (42 U.S.C. 12101 et seq.) or any other ap-
3 plicable law.

4 **SEC. 5. APPLICATION TO EACH PART OF PROCESS.**

5 The provisions of this Act—

6 (1) that apply to an organ transplant, also
7 apply to the evaluation and listing of a qualified in-
8 dividual, and to the organ transplant and post-
9 organ-transplant treatment of such an individual;
10 and

11 (2) that apply to related services, also apply to
12 the process for receipt of related services by such an
13 individual.

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

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