

1 fined in section 121.2 of title 42, Code of Federal
2 Regulations or a successor regulation), that—

3 (A) is in interstate commerce; or

4 (B) provides health care services in a man-
5 ner that—

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

8 (ii) includes use of an instrument (in-
9 cluding an instrument of transportation or
10 communication) of interstate commerce.

11 (3) **DISABILITY.**—The term “disability” has the
12 meaning given the term in section 3 of the Ameri-
13 cans with Disabilities Act of 1990 (42 U.S.C.
14 12102).

15 (4) **HUMAN ORGAN.**—The term “human organ”
16 has the meaning given the term in section 301(c) of
17 the National Organ Transplant Act (42 U.S.C.
18 274e(c)).

19 (5) **ORGAN TRANSPLANT.**—The term “organ
20 transplant” means the transplantation or trans-
21 fusion of a donated human organ into the body of
22 another human for the purpose of treating a medical
23 condition.

24 (6) **QUALIFIED INDIVIDUAL.**—The term “quali-
25 fied individual” means an individual who, with or

1 without a support network, provision of auxiliary
2 aids and services, or reasonable modifications to
3 policies or practices, meets eligibility requirements
4 for the receipt of a human organ.

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

8 (A) communication with persons respon-
9 sible for supporting a qualified individual with
10 postsurgical or other care following an organ
11 transplant or related services, including support
12 with medication;

13 (B) consideration, in determining whether
14 a qualified individual will be able to comply
15 with health requirements following an organ
16 transplant or receipt of related services, of sup-
17 port networks available to the qualified indi-
18 vidual, including family, friends, and providers
19 of home and community-based services, includ-
20 ing home and community-based services funded
21 through the Medicare or Medicaid program
22 under title XVIII or XIX, respectively, of the
23 Social Security Act (42 U.S.C. 1395 et seq.,
24 1396 et seq.), another health plan in which the
25 qualified individual is enrolled, or any program

1 or source of funding available to the qualified
2 individual; and

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

5 (8) RELATED SERVICES.—The term “related
6 services” means services related to an organ trans-
7 plant that consist of—

8 (A) evaluation;

9 (B) counseling;

10 (C) treatment, including postoperative
11 treatment, and care;

12 (D) provision of information; and

13 (E) any other service recommended or re-
14 quired by a physician.

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

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

1 (B) permitting the individual to designate
2 a person of the individual's choice for the pur-
3 poses of supporting that individual in commu-
4 nicating, processing information, or making
5 health care decisions;

6 (C) providing auxiliary aids and services to
7 facilitate the individual's ability to communicate
8 and process health-related information, includ-
9 ing providing use of assistive communication
10 technology;

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

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

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

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

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

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

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

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

20 The board of directors described in section
21 372(b)(1)(B) of the Public Health Service Act (42 U.S.C.
22 274(b)(1)(B)) shall not issue policies, recommendations,
23 or other memoranda that would prohibit, or otherwise
24 hinder, a qualified individual’s access to an organ trans-
25 plant solely on the basis of that individual’s disability.

1 **SEC. 4. PROHIBITION OF DISCRIMINATION.**

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

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

7 (2) deny the individual an organ transplant or
8 related services;

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

13 (4) refuse to place the individual on an organ
14 transplant waiting list.

15 (b) EXCEPTION.—

16 (1) IN GENERAL.—

17 (A) MEDICALLY SIGNIFICANT DISABIL-
18 ITIES.—Notwithstanding subsection (a), a cov-
19 ered entity may take a qualified individual’s
20 disability into account when making a health
21 care treatment or coverage recommendation or
22 decision, solely to the extent that the disability
23 has been found by a physician, following an in-
24 dividualized evaluation of the potential recipi-
25 ent, to be medically significant to the receipt of

1 the organ transplant or related services, as the
2 case may be.

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

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

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

25 (d) CLARIFICATIONS.—

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

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

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

19 (B) to limit the rights of an individual with
20 a disability under, or to replace or limit the
21 scope of obligations imposed by, the Americans
22 with Disabilities Act of 1990 (42 U.S.C. 12101
23 et seq.) including the provisions added to such
24 Act by the ADA Amendments Act of 2008, sec-
25 tion 504 of the Rehabilitation Act of 1973 (29

1 U.S.C. 794), section 1557 of the Patient Pro-
2 tection and Affordable Care Act (42 U.S.C.
3 18116), or any other applicable law.

4 (e) ENFORCEMENT.—

5 (1) IN GENERAL.—Any individual who alleges
6 that a qualified individual was subject to a violation
7 of this section by a covered entity may bring a claim
8 regarding the allegation to the Office for Civil
9 Rights of the Department of Health and Human
10 Services, for expedited resolution.

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

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

17 The provisions of this Act—

18 (1) that apply to an organ transplant, also
19 apply to the evaluation and listing of a qualified in-
20 dividual, and to the organ transplant and post-
21 organ-transplant treatment of such an individual;
22 and

23 (2) that apply to related services, also apply to
24 the process for receipt of related services by such an
25 individual.

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

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

