

Bill Cassidy, M.D.

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—119th Cong., 2d Sess.

S. 1782

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

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by _____

Viz:

1 Strike all after the enacting clause and insert the following:
2

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:

8 (1) **AUXILIARY AIDS AND SERVICES.**—The term
9 “auxiliary aids and services” has the meaning given
10 the term in section 4 of the Americans with Disabilities
11 Act of 1990 (42 U.S.C. 12103).

1 (2) COVERED ENTITY.—The term “covered en-
2 tity” means any—

3 (A) entity operating a program or activity,
4 involving an organ transplant or related serv-
5 ices, receiving Federal financial assistance; or

6 (B) public entity covered by title II of the
7 Americans with Disabilities Act of 1990 (42
8 U.S.C. 12131 et seq.) that carries out activities
9 relating to such a transplant or services.

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

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

18 (5) QUALIFIED INDIVIDUAL WITH A DIS-
19 ABILITY.—The term “qualified individual with a dis-
20 ability” means such individual within the meaning of
21 the term as used in title II of the Americans with
22 Disabilities Act of 1990 (42 U.S.C. 12131 et seq.),
23 section 504 of the Rehabilitation Act of 1973 (29
24 U.S.C. 794), and any other applicable Federal law,
25 including their implementing regulations.

1 (6) REASONABLE MODIFICATIONS.—The term
2 “reasonable modifications” means such modifica-
3 tions within the meaning of the term as used in or
4 for the Americans with Disabilities Act of 1990 (42
5 U.S.C. 12101 et seq.), section 504 of the Rehabilita-
6 tion Act of 1973 (29 U.S.C. 794), and any other ap-
7 plicable Federal law, including their implementing
8 regulations.

9 (7) RELATED SERVICES.—The term “related
10 services” means services, including the process by
11 which an individual receives such services, related to
12 an organ transplant that consist of—

13 (A) evaluation and listing on the trans-
14 plant waiting lists;

15 (B) counseling;

16 (C) treatment, including postoperative
17 treatment, and care;

18 (D) provision of information; and

19 (E) any other service recommended or re-
20 quired by a physician.

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

22 Section 372(b)(2)(B) of the Public Health Service
23 Act (42 U.S.C. 274(b)(2)(B)) is amended to read as fol-
24 lows:

1 “(B) establish membership criteria and
2 medical criteria for allocating organs, which
3 shall not include medical criteria that would
4 discriminate on the basis of disability in access
5 to an organ transplant, and provide to members
6 of the public an opportunity to comment with
7 respect to such membership and medical cri-
8 teria;”.

9 **SEC. 4. PROHIBITION OF DISCRIMINATION.**

10 (a) IN GENERAL.—Consistent with section 504 of the
11 Rehabilitation Act of 1973 (29 U.S.C. 794), the Ameri-
12 cans with Disabilities Act of 1990 (42 U.S.C. 12101 et
13 seq.), and any other applicable Federal law, including their
14 implementing regulations, and, subject to subsection (b),
15 a covered entity shall not, on the basis of the disability
16 of a qualified individual with a 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;

1 (4) refuse to place the individual on the trans-
2 plant waiting lists; or

3 (5) otherwise discriminate based on disability
4 with respect to the provision of an organ transplant
5 or related services.

6 (b) EXCEPTION.—

7 (1) PROFESSIONAL JUDGMENT IN TREAT-
8 MENT.—Notwithstanding subsection (a), following
9 an individualized assessment by a covered entity, the
10 covered entity may take the disability of a qualified
11 individual with a disability into account in carrying
12 out a program or activity consistent with section 504
13 of the Rehabilitation Act of 1973 (29 U.S.C. 794),
14 the Americans with Disabilities Act of 1990 (42
15 U.S.C. 12101 et seq.), and any other applicable Fed-
16 eral law, including their implementing regulations,
17 including section 84.56 of title 45, Code of Federal
18 Regulations, as in effect on the date of enactment of
19 this Act.

20 (2) CLARIFICATION.—If a qualified individual
21 with a disability would be able to comply with the
22 health requirements following an organ transplant or
23 provision of related services if given the necessary
24 reasonable modifications to policies, practices, or
25 procedures, or appropriate auxiliary aids and serv-

1 ices, the individual's inability to independently com-
2 ply with those requirements may not be taken into
3 account for purposes of paragraph (1).

4 (e) CLARIFICATIONS.—

5 (1) REASONABLE MODIFICATIONS.—

6 (A) IN GENERAL.—Consistent with section
7 504 of the Rehabilitation Act of 1973 (29
8 U.S.C. 794), the Americans with Disabilities
9 Act of 1990 (42 U.S.C. 12101 et seq.), and any
10 other applicable Federal law, and their imple-
11 menting regulations, a covered entity shall
12 make reasonable modifications to policies, prac-
13 tices, or procedures when such modifications
14 are necessary to avoid discrimination on the
15 basis of disability as described in subsection (a)
16 except as provided in subsection (b), unless the
17 entity can demonstrate that making such modi-
18 fications would fundamentally alter the nature
19 of the program or activity involved.

20 (B) INCLUSION.—For the purposes of sub-
21 section (b)(2) and subparagraph (A), the rea-
22 sonable modifications may include the use of
23 supported decision-making, when needed, by a
24 qualified individual with a disability.

1 (2) AUXILIARY AIDS AND SERVICES.—Con-
2 sistent with section 504 of the Rehabilitation Act of
3 1973 (29 U.S.C. 794), the Americans with Disabil-
4 ities Act of 1990 (42 U.S.C. 12101 et seq.), and any
5 other applicable Federal law, and their implementing
6 regulations, a covered entity shall take such steps as
7 may be necessary to ensure that no qualified indi-
8 vidual with a disability is excluded, denied services,
9 segregated, or otherwise discriminated against,
10 based on disability, from or for a procedure associ-
11 ated with the receipt of an organ transplant or re-
12 lated services because of the absence of appropriate
13 auxiliary aids and services, unless the covered entity
14 can demonstrate that taking such steps would fun-
15 damentally alter the nature of the program or activ-
16 ity involved or would result in an undue burden.

17 (3) PRIVACY AND SECURITY OF HEALTH INFOR-
18 MATION.—Nothing in this subsection shall be con-
19 strued to modify or alter the requirements for pri-
20 vacy or security of individually identifiable health in-
21 formation under the privacy, security, and breach
22 notification rules under parts 160 and 164 of title
23 45, Code of Federal Regulations (or a successor reg-
24 ulation) or for the confidentiality of substance use
25 disorder patient records under part 2 of title 42,

1 Code of Federal Regulations (or a successor regula-
2 tion).

3 (d) ENFORCEMENT.—When a complaint regarding
4 an allegation of discrimination on the basis of disability
5 with respect to the provision of an organ transplant or
6 related services is brought to the Office for Civil Rights
7 of the Department of Health and Human Services, such
8 Office shall consider the complaint, consistent with the Of-
9 fice's practices and procedures, for expedited complaint
10 resolution or early complaint resolution, as appropriate
11 and as appropriate, may require a remedy, consistent with
12 the enforcement remedies for a violation of section 504
13 of the Rehabilitation Act of 1973 (29 U.S.C. 794), the
14 Americans with Disabilities Act of 1990 (42 U.S.C. 12101
15 et seq.), and any other applicable Federal law, including
16 their implementing regulations.

17 (e) REPORT TO CONGRESS.—

18 (1) IN GENERAL.—Not later than 1 year after
19 the date of enactment of this Act, and annually
20 thereafter, the Secretary shall prepare and submit to
21 the committees specified in paragraph (2) a report
22 that contains—

23 (A) a description of the activities carried
24 out under this section, which shall, at a min-
25 imum, contain—

1 (i) information concerning the number
2 of complaints received related to discrimi-
3 nation as described in subsection (a);

4 (ii) a description of the process by
5 which the Office for Civil Rights of the De-
6 partment of Health and Human Services
7 carried out the expedited complaint resolu-
8 tion or early complaint resolution, where
9 appropriate;

10 (iii) the results of such complaints;
11 and

12 (iv) information stating the resources
13 necessary for such Office to carry out such
14 activities; and

15 (B) recommendations by the Secretary to
16 improve enforcement of this Act.

17 (2) SUBMISSION.—The Secretary shall submit
18 the report to the Committee on Energy and Com-
19 merce of the House of Representatives, and to the
20 Committee on Health, Education, Labor, and Pen-
21 sions of the Senate.

22 **SEC. 5. RULE OF CONSTRUCTION.**

23 Nothing in this Act shall be construed to invalidate
24 or limit the rights, remedies, and procedures, including

1 legal standards, available to an individual aggrieved
2 under—

3 (1) the Americans with Disabilities Act of 1990
4 (42 U.S.C. 12101 et seq.);

5 (2) section 504 of the Rehabilitation Act of
6 1973 (29 U.S.C. 794); or

7 (3) any other applicable Federal or State law
8 that provides additional protections against discrimi-
9 nation on the basis of disability with respect to
10 organ transplants or related services.