

118TH CONGRESS
1ST SESSION

H. R. 4343

To amend the National Organ Transplant Act to clarify the definition of valuable consideration, to clarify that pilot programs that honor and promote organ donation do not violate that Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 23, 2023

Ms. MATSUI (for herself and Mr. WILSON of South Carolina) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the National Organ Transplant Act to clarify the definition of valuable consideration, to clarify that pilot programs that honor and promote organ donation do not violate that Act, and for other purposes.

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 “Organ Donation Clari-
5 fication Act of 2023”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) As of May 2023, 113,999 people await an
2 organ transplant, with 95,957 of those people wait-
3 ing for a kidney, and average wait times are ap-
4 proaching five years for a kidney, with over one-and-
5 a-half times as many people being added to the wait-
6 ing lists as getting a transplant.

7 (2) Of the nearly three million Americans who
8 die annually, under 30,000, representing about one
9 percent of all deaths each year, possess major or-
10 gans healthy enough for transplanting.

11 (3) On average, 17 people a day died while
12 waiting for an organ in 2020, with the majority of
13 those people waiting for a kidney.

14 (4) In 2022, approximately 4,498 people were
15 removed from kidney waiting lists and approximately
16 1,500 from liver (1,123), heart (239), and lungs
17 (145) waiting lists because they became permanently
18 too sick to receive a transplant.

19 (5) Over 75 percent of dialysis patients are not
20 employed because dialysis requires multiple treat-
21 ments per week which last several hours and leave
22 patients drained, thus creating a huge financial bur-
23 den on the patients, their families, and the govern-
24 ment; moreover, lost tax revenue from these individ-
25 uals is not included in the cost estimates above.

1 (6) A patient receiving a kidney transplant, and
2 thus no longer needing dialysis, can enjoy a much
3 higher quality of life for another 10–15 years on av-
4 erage.

5 (7) As medical advances extend people’s lives on
6 dialysis, the number of patients on dialysis will in-
7 crease significantly, as will the costs for individuals
8 and the Federal Government.

9 (8) Roughly seven percent of the Medicare
10 budget goes to the End Stage Renal Disease Pro-
11 gram, with dialysis costing Medicare over \$90,000
12 per patient per year, as Federal law dictates that
13 Medicare will cover dialysis for everyone who has
14 made minimal Social Security tax payments.

15 (9) A kidney transplant pays for itself in less
16 than two years, with each transplant saving an aver-
17 age of \$136,000 in medical costs over a 10-year pe-
18 riod, 75 percent of which is savings to the taxpayers.

19 (10) Experts project that if the supply of trans-
20 plant kidneys could be increased to meet the de-
21 mand, taxpayers would save more than
22 \$16,000,000,000 per year in medical costs.

23 (11) The World Health Organization estimates
24 that 10 percent of all transplants take place on the
25 international black market, the last choice for des-

1 perate patients facing an alternative of death, how-
2 ever recipients often receive infected kidneys and
3 suffer poor health outcomes and donors are often
4 victimized.

5 (12) Present policy on domestic donation has
6 never been subject to studies or pilots to determine
7 effectiveness in increasing the availability of donated
8 organs and the effectiveness of safeguards that pre-
9 vent coercion or exploitation, precludes all but altru-
10 istic donation, prohibiting any form of incentive or
11 benefit for donors.

12 (13) In 2010, Israel implemented sweeping
13 changes to its national organ donation program in-
14 cluding reducing financial burdens on donors, giving
15 future transplantation priority to registered organ
16 donors and their families, and promoting donation
17 by reimbursing the donor's medical costs, 40 days of
18 lost wages, and five years of medical and life insur-
19 ance costs, and as a result saw organ donation ap-
20 proximately triple over a 10-year period.

21 (14) Experts are arriving at a consensus that
22 trials are necessary to find new methods of pro-
23 moting additional organ donation which will save
24 lives and reduce organ trafficking.

1 **SEC. 3. CLARIFICATION OF CERTAIN PROVISIONS OF THE**
2 **NATIONAL ORGAN TRANSPLANT ACT.**

3 (a) VALUABLE CONSIDERATION.—Section 301(c)(2)
4 of the National Organ Transplant Act (42 U.S.C.
5 274e(c)(2)) is amended to read as follows:

6 “(2) The term ‘valuable consideration’ does not
7 include the following:

8 “(A) Reasonable payments associated with
9 the removal, transportation, implantation, proc-
10 essing, preservation, quality control, and stor-
11 age of a human organ.

12 “(B) Advanced payments or reimburse-
13 ment for travel, lodging, food during travel, and
14 other logistical expenses related to donation.

15 “(C) Advanced payments or reimburse-
16 ment for dependent care expenses related to do-
17 nation before, during, or after the donation, but
18 not later than the date that is 10 years after
19 the date of the donation.

20 “(D) Advanced payments or reimburse-
21 ment for lost wages related to donation.

22 “(E) Medical expenses related to donation
23 and all related follow-up care including prevent-
24 ative follow-up care and medication for up to a
25 10-year period.

1 “(F) Paperwork or legal costs related to
2 donation.

3 “(G) Any term life insurance policy against
4 the risk of death or disability as a result of do-
5 nating an organ or the longer-term health ef-
6 fects of having donated an organ, that—

7 “(i) in the case of a life insurance pol-
8 icy, provides for payments in amounts less
9 than \$2,000,000, adjusted annually for in-
10 flation; and

11 “(ii) in the case of a disability insur-
12 ance policy, provides for payments equal to
13 or less than the reasonable earnings expec-
14 tations of the donor.”.

15 (b) COVERED PILOT PROGRAM.—Section 301 of the
16 National Organ Transplant Act (42 U.S.C. 274e) is
17 amended by adding at the end the following:

18 “(d) COVERED PILOT PROGRAM ENCOURAGING
19 ORGAN DONATION.—

20 “(1) APPROVAL.—The Secretary may approve
21 covered pilot programs for purposes of applying the
22 exception in paragraph (2).

23 “(2) EXCEPTION TO PROHIBITION.—Subsection
24 (a) does not prohibit—

1 “(A) acquisition, receipt, or transfer of any
2 noncash benefit provided pursuant to a covered
3 pilot program; or

4 “(B) other actions taken to carry out a
5 covered pilot program.

6 “(3) DEFINITIONS.—In this subsection:

7 “(A) The term ‘covered pilot program’
8 means a pilot program that—

9 “(i) is conducted by the Federal Gov-
10 ernment or any State, territory, Tribe, or
11 local government;

12 “(ii) is approved by the Secretary
13 under paragraph (1);

14 “(iii) is subject to an ethical review
15 board process;

16 “(iv) has a term of not more than 5
17 fiscal years;

18 “(v) is for the purpose of providing,
19 or allowing the provision of, noncash bene-
20 fits for organ donation and organ donors,
21 and measuring the effects of providing
22 such noncash benefits;

23 “(vi) measures the effects of providing
24 such noncash benefits; and

1 “(vii) allows for the determination of
2 the recipient of an organ donated pursuant
3 to the covered pilot program—

4 “(I) in the case of organs from
5 deceased donors, only by the Organ
6 Procurement and Transplantation
7 Network; and

8 “(II) in the case of nondirected
9 organs from living donors, only by a
10 transplant center that is a member of,
11 and abides by the rules and require-
12 ments of, the Organ Procurement and
13 Transplantation Network established
14 pursuant to section 372 of the Public
15 Health Service Act.

16 “(B) The term ‘noncash benefit’ means
17 any benefit or thing of value received by an
18 organ donor that is impossible to sell, trade, or
19 otherwise transfer to another individual.

20 “(4) REPORT TO CONGRESS.—Not later than
21 three years after the Secretary first approves a cov-
22 ered pilot program, and every three years thereafter
23 until there is no longer a covered pilot program in
24 operation, the Secretary shall submit a report to the
25 Congress on—

1 “(A) the impact of covered pilot programs
2 on the organ pool;

3 “(B) the demographics of the donors par-
4 ticipating in covered pilot programs;

5 “(C) the demographics of the recipients of
6 organs donated by participants in covered pilot
7 programs;

8 “(D) the effectiveness, fairness, and
9 equitableness of the distribution of nondirected
10 living donor organs that are donated by partici-
11 pants in covered pilot programs; and

12 “(E) recommendations to Congress on—

13 “(i) improving covered pilot programs;

14 and

15 “(ii) expanding the use of noncash
16 benefits to incentivize organ donation.”.

17 (c) RELATIONSHIP TO PAYMENTS BY RECIPIENT OF
18 ORGAN.—Subsection (d) of section 377 of the Public
19 Health Service Act (42 U.S.C. 274f(d)) is amended to
20 read as follows:

21 “(d) RELATIONSHIP TO PAYMENTS UNDER OTHER
22 PROGRAMS.—An award may be made under subsection (a)
23 only if the applicant involved agrees that the award will
24 not be expended to pay the qualifying expenses of a donat-
25 ing individual to the extent that—

1 “(1) payment has been made, or can reasonably
2 be expected to be made, with respect to such ex-
3 penses—

4 “(A) under any State compensation pro-
5 gram, under an insurance policy, or under any
6 Federal or State health benefits program; or

7 “(B) by an entity that provides health
8 services on a prepaid basis; or

9 “(2) the recipient of the organ has made pay-
10 ment, or had agreed to make payment, with respect
11 to such expenses.”.

○