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

MAY 28, 2021

Mr. CARTWRIGHT (for himself, Mr. WILSON of South Carolina, Mr. COHEN, Mr. FITZPATRICK, Mr. KELLY of Pennsylvania, Mr. MCKINLEY, Mr. SAN NICOLAS, Ms. SCHATowsky, Mr. SCHIFF, Ms. SPEIER, Mr. TIMMONS, and Mr. YOUNG) 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 2021”.
6 SEC. 2. FINDINGS.
7 Congress finds the following:
(1) As of March 2021, 108,000 people await an organ transplant, with 91,000 of those people waiting for a kidney, and average wait times are approaching five years for a kidney, with over one-and-a-half times as many people being added to the waiting lists as getting a transplant.

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

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

(4) In 2020, approximately 3,800 people were removed from kidney waiting lists and approximately 1,600 from liver, heart, and lungs waiting lists because they became permanently too sick to receive a transplant.

(5) Over 75 percent of dialysis patients are not employed because dialysis requires multiple treatments per week which last several hours and leave patients drained, thus creating a huge financial burden on the patients, their families, and the government; moreover, lost tax revenue from these individuals is not included in the cost estimates above.
(6) A patient receiving a kidney transplant, and thus no longer needing dialysis, can enjoy a much higher quality of life for another 10–15 years on average.

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

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

(9) A kidney transplant pays for itself in less than two years, with each transplant saving an average of $146,000 in medical costs over a 10-year period, 75 percent of which is savings to the taxpayers.

(10) Experts project that if the supply of transplant kidneys could be increased to meet the demand, taxpayers would save more than $14,000,000,000 per year in medical costs.

(11) The World Health Organization estimates that 10 percent of all transplants take place on the international black market, the last choice for des-
perate patients facing an alternative of death, however recipients often receive infected kidneys and suffer poor health outcomes and donors are often victimized.

(12) Present policy on domestic donation has never been subject to studies or pilots to determine effectiveness in increasing the availability of donated organs and the effectiveness of safeguards that prevent coercion or exploitation, precludes all but altruistic donation, prohibiting any form of incentive or benefit for donors.

(13) In 2010, Israel implemented sweeping changes to its national organ donation program including reducing financial burdens on donors, giving future transplantation priority to registered organ donors and their families, and promoting donation by reimbursing the donor’s medical costs, 40 days of lost wages, and five years of medical and life insurance costs, and as a result saw organ donation approximately triple over a 10-year period.

(14) Experts are arriving at a consensus that trials are necessary to find new methods of promoting additional organ donation which will save lives and reduce organ trafficking.
SEC. 3. CLARIFICATION OF CERTAIN PROVISIONS OF THE NATIONAL ORGAN TRANSPLANT ACT.

(a) Relation to Other Laws.—Section 301 of the National Organ Transplant Act (42 U.S.C. 274e) is amended by adding at the end the following:

“(d) Relation to Other Laws.—

“(1) Governments Encouraging Organ Donation.—This section shall not—

“(A) apply to actions taken by the Government of the United States or any State, territory, tribe, or local government of the United States to carry out a covered pilot program; or

“(B) prohibit acceptance of any noncash benefits provided by the pilot program under subparagraph (A).

“(2) No Prohibition on Other Benefits Programs.—Nothing in this subsection shall be construed to prohibit actions, other than actions described in this section, taken by any State, territory, tribe, or unit of local government in the United States to provide benefits for human organ donation.

“(3) Covered Pilot Program.—For purposes of this subsection—

“(A) the term ‘covered pilot program’ means a pilot program approved by the Secretary of Health and Human Services, subject
to an ethical review board process, with a term
of not more than 5 fiscal years, for the purpose
of measuring the effect of removing disincen-
tives or providing a noneash benefit that may
increase the organ pool. Distributions of organs
from deceased donors under the pilot program
shall be conducted only through the Organ Pro-
curement and Transplantation Network at a
transplant center approved by the United Net-
work for Organ Sharing or any other entity
designated by the Secretary of Health and
Human Services; and

“(B) the term ‘noneash benefit’ means any
benefit or thing of value received by an organ
donor that is impossible to sell, trade, or other-
wise transfer to another individual.”.

(b) Valuable Consideration.—Section 301(c)(2)
of the National Organ Transplant Act (42 U.S.C.
274e(c)(2)) is amended to read as follows:

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

“(A) Reasonable payments associated with
the removal, transportation, implantation, proc-
essing, preservation, quality control, and stor-
age of a human organ.
“(B) Reimbursement for travel, lodging, food during travel, and other logistical expenses related to donation.

“(C) Provision of advanced payments or reimbursement for dependent care needs for pre-transplant appointments in addition to during the period of donation and post-transplant follow-up care related to the donation for up to a 10-year period.

“(D) Reimbursement for lost wages related to donation.

“(E) Medical expenses related to donation and all related follow-up care including preventative follow-up care and medication for up to a 10-year period.

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

“(G) Any term life insurance policy against the risk of death or disability as a result of donating an organ or the longer-term health effects of having donated an organ, that—

“(i) in the case of a life insurance policy, provides for payments in amounts less than $2,000,000, adjusted annually for inflation; and
“(ii) in the case of a disability insurance policy, provides for payments equal to or less than the reasonable earnings expectations of the donor.”.