WEST VIRGINIA CODE: §16-65-2

§16-65-2. Definitions.

As used in this article:

“Anatomical gift” means a donation of all or part of a human body to take effect after the donor’s death for the purpose of transplantation or transfusion.

“Auxiliary aids and services” means an aid or service that is used to provide information to a person with cognitive, intellectual, neurological, or physical disability and is available in a format or manner that allows the person to better understand the information and may include:

(1) Qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(2) Qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(3) Provision of information in a format that is accessible for individuals with cognitive, neurological, developmental, and/or intellectual disabilities;

(4) Provision of supported decision-making services;

(5) Acquisition or modification of equipment or devices; and

(6) Other similar services and actions.

“Covered entity” means:

(1) Any licensed provider of health care services, including licensed health care practitioners, hospitals, nursing facilities, laboratories, intermediate care facilities, psychiatric residential treatment facilities, institutions for individuals with intellectual or developmental disabilities, and prison health centers; or

(2) Any entity responsible for matching anatomical gift donors to potential recipients.

“Disability” has the same meaning set forth in the Americans with Disabilities Act of 1990, as amended by the ADA Amendments Act of 2008, at 42 U.S.C. § 12102.

“Organ transplant” means the transplantation or transfusion of a part of a human body into the body of another for the purpose of treating or curing a medical condition.

“Qualified individual” means an individual who has a disability and meets the essential

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eligibility requirements for the receipt of an anatomical gift with or without any of the following:

(1) Individuals or entities available to support and assist the person with an anatomical gift or transplantation;

(2) Auxiliary aids or services; or

(3) Reasonable modifications to the policies or practices of a covered entity.

"Reasonable modifications to policies or practices" may include:

(1) Communication with individuals responsible for supporting an individual with post-surgical and post-transplantation care, including medication; or

(2) Consideration of support networks available to the individual, including family, friends, and home and community-based services, including home and community-based services funded through Medicaid, Medicare, another health plan in which the individual is enrolled, or any program or source of funding available to the individual, in determining whether the individual is able to comply with post-transplant medical requirements.

"Supported decision-making" includes use of a support person or persons in order to assist an individual in making medical decisions, communicate information to the individual, or ascertain an individual's wishes, including:

(1) Inclusion of the individual's attorney-in-fact, health care proxy, or any person of the individual's choice in communications about the individual's medical care;

(2) Permitting the individual to select a person of his or her choice for the purposes of supporting that individual in communicating, processing information, or making medical decisions;

(3) Provision of auxiliary aids and services to facilitate the individual's ability to communicate and process health-related information, including use of assistive communication technology;

(4) Provision of information to persons designated by the individual, consistent with the provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. §1301 *et seq.*, and other applicable laws and regulations governing disclosure of health information;

(5) Provision of health information in a format that is readily understandable by the individual; or

(6) If the individual has a court-appointed guardian or other individual responsible for making medical decisions on behalf of the individual, any measures to ensure that the

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individual is included in decisions involving his or her own health care and that medical decisions are in accordance with the individual's own expressed interests.

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