

December 15, 2023

VIA EMAIL

Senator Chuck Grassley
135 Hart Senate Office Building
Washington, D.C. 20510

Senator Jerry Moran
521 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Grassley and Senator Moran,

As a veteran of the organ donation and transplant field for over 50 years, I was deeply troubled by your remarks on the Senate floor on Wednesday, December 13th, regarding the present state of the system and the rollout of the *Securing the U.S. Organ Procurement and Transplantation Network Act*.

You made it clear that you want to let for-profit companies run the organ donation system—a system that from its very beginnings has relied on Americans giving freely to save others, receiving nothing in return. Organ donation is the only remaining part of health care still run by non-profits, but now corporate giants like Google, fuelled by your legislation, are preparing to disrupt it.

Your words should alarm every American who has registered as an organ donor and all the organ transplant patients desperately waiting for the gift of life.

I was a member of the Task Force on Organ Transplantation, which was created in 1984 by the Department of Health and Human Services following Congress' passing of the National Organ Transplant Act. Our role, which we fulfilled, was to help design the structure for the Organ Procurement and Transplantation Network (OPTN) in a way the best serves and protects the organ transplant patients, organ donors and donor families who would interact with it every day. Among our chief recommendations was that the OPTN be built up as a non-profit public-private partnership, free from embedded financial incentives that could distract from the responsibility of saving lives. We also feared that a for-profit organ donation system could limit the number of organs donated by eroding the trust of donor families, especially families of color. Congress agreed, and since then hundreds of thousands of lives have been renewed through the gift of organ donation and transplantation.

On June 13th, a fellow Task Force member and I wrote to you and your colleagues across Congress to share our concerns about the *Securing the U.S. Organ Procurement and Transplantation Network Act*. That letter can be read here: <https://www.natlmottep.org/#TaskForceLetter>

The *Securing the U.S. Organ Procurement and Transplantation Network Act* includes provisions to amend Section 372 of the Public Health Service Act (42 U.S.C. 274) to eliminate three rules that have been in place since the OPTN's inception:

1. That only non-profit entities may be awarded federal contracts to run this system.

2. That these non-profit contractors must have expertise in organ donation and transplantation.
3. That annual funds awarded through these federal contracts cannot exceed a specified upper limit, which at the time of the bill's passing was \$7,000,000.

Specifically, the following language describing the composition and contracting process for the OPTN was eliminated from Section 372:

(a) CONTRACT AUTHORITY OF SECRETARY; LIMITATION; AVAILABLE APPROPRIATIONS

~~The Secretary shall by contract provide for the establishment and operation of an Organ Procurement and Transplantation Network which meets the requirements of subsection (b). The amount provided under such contract in any fiscal year may not exceed \$7,000,000. Funds for such contracts shall be made available from funds available to the Public Health Service from appropriations for fiscal years beginning after fiscal year 1984.~~

(b) FUNCTIONS

~~(1) The Organ Procurement and Transplantation Network shall carry out the functions described in paragraph (2) and shall—~~

~~(A) be a private nonprofit entity that has an expertise in organ procurement and transplantation~~

In place of the above language, the following was made law:

(a) CONTRACT AUTHORITY OF SECRETARY; LIMITATION; AVAILABLE APPROPRIATIONS

In General -- The Secretary shall provide for the continued operation of an Organ Procurement and Transplantation Network which meets the requirements of subsection (b). The Secretary may award grants, contracts, or cooperative agreements, as the Secretary determines appropriate, for purposes of carrying out this section.

(b) Composition –

(1) In General – The Organ Procurement and Transplantation Network shall –

(A) be operated through awards to public or private entities made by the Secretary that are distinct from the awards made to support the organization tasked with supporting the board of directors described in subparagraph (B);

I am still alarmed by these legal changes. As I had feared, major for-profit corporations such as Google, Microsoft and Oracle, none of whom have experience in managing an organ transplant network but now have the legal ability to take on OPTN contracts, are lining up to take over. You can read about it in this article in Becker's Hospital Review that was published on November 28th:

<https://www.beckershospitalreview.com/digital-health/oracle-google-microsoft-look-to-disrupt-organ-donation.html>

Regardless, it is now the responsibility of the Health Resources and Services Administration (HRSA), the federal agency that oversees the OPTN, to work with public and private stakeholders to design future OPTN contracts and decide which organizations will be chosen to fulfil them.

You made it unmistakably clear that you both have championed the *Securing the U.S. Organ Procurement and Transplantation Network Act* from the day it was introduced to the day it was signed into law by President Joe Biden. You also made it clear that you sought to introduce additional competition for OPTN contracts and remove the incumbent OPTN contractor, the non-profit United Network for Organ Sharing, due to a history of failure and abuse.

In describing the legislation's importance, you have repeatedly reinforced that a key goal was to empower HRSA to make improvements to the transplant system. The following is written in a July 28 news release hosted on Senator Grassley's website:

"The *Securing the U.S. Organ Procurement and Transplantation Network Act* will remove barriers in OPTN contracting and give the Health Resources and Services Administration (HRSA) statutory authority to improve management and government oversight of the U.S. organ transplantation system."

Those words can be found at the following URL: <https://www.grassley.senate.gov/news/news-releases/bipartisan-organ-oversight-efforts-spearheaded-by-grassley-result-in-major-legislative-victory>

On Wednesday, you both condemned HRSA for performing those duties, accusing the agency of attempting to restrict subvert Congress' intentions for OPTN contracts through the inclusion of "poison pills," as Senator Grassley said, in the contracting process. Senator Moran named an example: that HRSA plans to restrict the competition process for one of the OPTN contracts, to support the OPTN Board of Directors in their governance of the system, to strictly non-profit bidders.

Senators, the only thing that would limit is the ability of a corporation such as Google to dictate organ donation and transplantation policymaking and governance at the highest non-government level of the OPTN. Why are you fighting with such ferocity to ensure for-profit entities are positioned to guide this sector of healthcare?

Earlier this month, Senator Grassley launched a probe into the growing role of private equity in healthcare, concerned with the dangers of profit-driven mindsets in patient care. In an NBC News article published on December 3rd regarding this development, Senator Grassley is quoted as saying:

"When it comes to our nation's hospitals, a business model that prioritizes profits over patient care and safety is unacceptable."

This can be read at the following URL: <https://www.nbcnews.com/politics/congress/senators-grassley-whitehouse-probe-private-equity-us-health-care-rcna128070>

I agree with you. For-profit models of healthcare can be a danger to patients. For-profits have poor track records of prioritizing underserved populations, and by their very nature must prioritize revenue and shareholders over anything else, even the greater good.

However, can you not see the connection between this issue and the issue of an organ donation system left in the hands of for-profit companies?

Understand that for every lobbyist and well-connected group that had the privilege of speaking with you and your staff, there are many more people outside Capitol Hill who have their own views, fears and hopes. My colleagues and I cautioned you and your fellow congress members that the bill, as it was passed, creates a danger of for-profit exploitation of patients and their families. I can also point you to more than 35,000 organ transplant patients, organ donor families, and other people who also cried out and petitioned for you to consider their position: <https://sign.moveon.org/petitions/stop-congress-from-monetizing-organ-donation-reject-for-profit-healthcare>

We were ignored and continue to be ignored. However, we still exist and we disagree that the only way to improve our system, or to remove a failing contractor, is to offer America's organ donors and transplant patients to for-profit companies on a silver platter.

In deciding the future of a field such as this one, which is built on the trust and altruism of thousands of organ donors and their families, it would be dangerous to hear only one side of an issue but not the other.

Everybody wants to see the system improve. I have fought for that for my entire life. But the only way we can do it is if we come together. As senators, you are sworn to have the best interests of Americans in mind. We can be allies in saving lives, but I ask you: Step back, consider what doors your legislation has opened, and ask yourselves whether you have seen the full picture.

Sincerely,



Dr. Clive O. Callender, M.D. FACS
Founder, National Minority Organ Tissue Transplant Education Program (MOTTEP)
Howard University College of Medicine

CC:

Senator Ron Wyden

Representative Steven Horsford, Chair of the Congressional Black Caucus

Secretary Xavier Becerra, Department of Health and Human Services

Administrator Carole Johnson, Health Resources and Services Administration