2. The evaluation process;
3. The surgical procedure, including postoperative treatment;
4. The availability of alternative treatments for the transplant recipient;
5. The potential medical or psychosocial risks to the donor;
6. The national and transplant center-specific outcomes for recipients, and the national and center-specific outcomes for living donors, as data are available;
7. The possibility that future health problems related to the donation may not be covered by the donor’s insurance, and that the donor’s ability to obtain health, disability, or life insurance may be affected;
8. The donor’s right to opt out of donation at any time during the donation process; and
9. The fact that if a transplant is not provided in a Medicare-approved transplant center it could affect the transplant recipient’s ability to have his or her immunosuppressive drugs paid for under Medicare Part B.

D. Notification Requirements

Patients placed on the waiting list must be given information about the transplant center that could impact their ability to receive a transplant should an organ become available, and what procedures are in place to ensure the availability of a transplant team.

A transplant center served by a single transplant surgeon or physician must inform patients placed on the center’s waiting list of:
1. The potential unavailability of the transplant surgeon or physician; and
2. Whether the center has a mechanism to provide an alternate transplant surgeon or transplant physician.

At least 30 days before a center’s Medicare approval is terminated, whether voluntarily or involuntarily, the center must:
1. Inform patients on the center’s waiting list and provide assistance to waiting list patients who choose to transfer to the waiting list of another Medicare-approved transplant center without loss of time accrued on the waiting list; and
2. Inform Medicare beneficiaries on the center’s waiting list that Medicare will no longer pay for transplants performed at the center after the effective date of the center’s termination of approval.

(See XVII. “Implantation of Cells, Tissue and Organs,” page 5.43, for information about transfer of tissue that may be infected with specified viruses.)

E. Nondiscrimination Requirements

PROHIBITION AGAINST DISCRIMINATION BASED ON RECIPIENT’S PHYSICAL OR MENTAL DISABILITY

Hospitals, physicians, procurement organizations and other persons may not determine the ultimate recipient of an anatomical gift based upon a potential recipient’s physical or mental disability (as defined in the federal Americans with Disabilities Act of 1990), except to the extent that the disability has been found by a physician, following a case evaluation of the recipient, to be medically significant to the provision of the anatomical gift [Health and Safety Code Section 7151.35].

This nondiscrimination requirement applies to each step of the organ transplant process, including, but not limited to:
1. Referral from a primary care provider to a specialist;
2. Referral from a specialist to a transplant center;
3. Evaluation of the patient by the transplant center;
4. Consideration for placing the patient on the official waiting list.

A person with a physical or mental disability may not be required to demonstrate postoperative independent living abilities in order to have access to a transplant if there is evidence that the person will have sufficient compensatory support and assistance [Health and Safety Code Section 7151.35(c)].

In addition, health plans and insurance companies may not deny payment for the costs of solid organ or other tissue transplantation services based upon the recipient’s HIV status [Health and Safety Code Section 1374.17; Insurance Code Section 10123.22].

PROHIBITION AGAINST DISCRIMINATION BASED ON RECIPIENT’S USE OF MARIJUANA

California law prohibits automatic denial of an organ transplant because a potential recipient uses "medical marijuana." Specifically, the law states that a hospital, physician and surgeon, procurement organization, or other person may not determine the ultimate recipient of an anatomical gift based solely upon a potential recipient’s status as a qualified patient (as defined below), or based solely upon a positive test for the use of medical marijuana by a potential recipient who is a qualified patient, unless the patient’s use of medical marijuana has been found by a
physician and surgeon, following a case-by-case evaluation of the potential recipient, to be medically significant to the provision of the anatomical gift.

This law should not be interpreted to require referrals or recommendations for, or the performance of, medically inappropriate organ transplants.

This restriction applies to each part of the organ transplant process, including, but not limited to:

1. The referral from a primary care provider to a specialist.
2. The referral from a specialist to a transplant center.
3. The evaluation of the patient for the transplant by the transplant center.
4. The consideration of the patient for placement on the official waiting list.

“Qualified patient” is defined as a person who is entitled to the protections of California’s Compassionate Use Act of 1996, but who does not have a medical marijuana identification card [Health and Safety Code Section 11362.7]. The Compassionate Use Act of 1996 is the name of California’s “medical marijuana” law. This law was enacted to allow seriously ill Californians to use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person’s health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief. [Health and Safety Code Section 11362.5]

It is odd that this law applies only to persons who do not have a medical marijuana identification card. This is likely a drafting error. Hospitals and physicians should treat persons who do have an identification card in the same manner.

Hospitals and physicians are advised to create and maintain good documentation of reasons for denial of an organ transplant for marijuana users who are determined to be inappropriate to receive an organ, whether or not the reason was based in whole or in part on marijuana use.

[Health and Safety Code Section 7151.36]