§ 4363. Waiting lists for organs. 1. All organs retrieved for transplantation in New York state shall be allocated according to waiting lists developed by the organ procurement organization in the service area in which the organ is procured, provided, however, that nothing herein shall preclude the exercise of medical judgment in determining the suitability of a proposed recipient to receive a particular organ, and provided further, however, that if an organ is brought into a service area of an organ procurement organization from the service area of another organ procurement organization, the organ shall be allocated according to the waiting list developed by the organ procurement organization in the service area in which the organ is to be implanted. Nothing in this section shall prohibit:

(a) an individual donor from designating the recipient of an organ;

(b) organ sharing with other organ procurement organizations in accordance with federal and state standards including standards to meet the needs of patients who are highly sensitized and for whom it is difficult to identify a suitable kidney due to conditions such as a blood transfusion, immunization, prior pregnancy or a previous failed kidney transplant;

(c) organ sharing with other organ procurement organizations in accordance with organ sharing agreements approved by the commissioner.

2. In policies and procedures for distributing organs, no organ procurement organization shall consider or give any preference to patients in a facility based upon the facility's past or present procurement performance or its past or present relationship with a donor hospital.