

UNIFORM ANATOMICAL GIFT ACT (1987)

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

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MEETING IN ITS NINETY-SIXTH YEAR
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WITH PREFATORY NOTE AND COMMENTS

Approved by the American Bar Association
Philadelphia, Pennsylvania, February 9, 1988

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UNIFORM ANATOMICAL GIFT ACT (1987)

PREFATORY NOTE

The Uniform Anatomical Gift Act was promulgated in 1968. It has been adopted in all 50 states and the District of Columbia. In the prefatory note it was observed:

“... if utilization of bodies and parts of bodies is to be effectuated, a number of competing interests in a dead body must be harmonized, and several troublesome legal questions must be answered. . . . Both the common law and the present statutory picture is one of confusion, diversity, and inadequacy. . . . The Uniform Anatomical Gift Act herewith presented by the National Conference of Commissioners on Uniform State Laws carefully weighs the numerous conflicting interests and legal problems. Wherever adopted it will encourage the making of anatomical gifts, thus facilitating therapy involving such procedures. . . . It will provide a useful and uniform legal environment throughout the country for this new frontier of modern medicine.”

The contemporary significance of the Uniform Anatomical Gift Act has been recently assessed by the Hastings Center; in the Preface to its Report of the project on organ transplantation, “*Ethical, Legal and Policy Issues Pertaining to Solid Organ Procurement*” (October, 1985), it is stated:

“The issue of transplantation remained quiescent for many years. It was only with the successes occasioned by the introduction of powerful new immunosuppressive drugs such as Cyclosporine and improvements in surgical techniques for transplanting organs and tissues in the past few years that the issue of organ procurement was brought back into the center stage of public policy concern. Enhancements in the capacity to perform transplants increased the demand for solid organs. It has become apparent that the public policy instituted in 1969 [by promulgation of the Uniform Anatomical Gift Act in 1968] is not producing a sufficient supply of organs to meet the current or projected demand for them.”

A 1985 Gallup Poll commissioned by the American Council on Transplantation reported that 93 percent of Americans surveyed knew about organ transplantation and, of these, 75 percent approved of the concept of organ donation. Although a large majority approves of organ donation, only 27 percent indicate that they would be very likely to donate their own organs, and only 17 percent have actually completed donor cards. Of those who were very likely to donate, nearly half have not told family members of their wish, even though family permission is

usually requested before an organ is removed. (Report of the Task Force on Organ Transplantation pursuant to the 1984 National Organ Transplant Act – P.L. 98-507 – “Organ Transplantation: Issues and Recommendations” (April 1986)).

The inadequacies in the present system of encouraging voluntary donation of organs were enumerated in the Hastings Center Report:

“The key problems that hinder organ donation include:

1. Failure of persons to sign written directives.
2. Failure of police and emergency personnel to locate written directives at accident sites.
3. Uncertainty on the part of the public about circumstances and timing of organ recovery.
4. Failure on the part of medical personnel to recover organs on the basis of written directives.
5. Failure to systematically approach family members concerning donation.
6. Inefficiency on the part of some organ procurement agencies in obtaining referrals of donors.
7. High wastage rates on the part of some organ procurement agencies in failing to place donated organs.
8. Failure to communicate the pronouncement of death to next of kin.
9. Failure to obtain adequate informed consent from family members.”

State and federal legislation have addressed several of these problems. For example, a majority of states have enacted a variety of “required request” laws that require hospital administrators to discuss with next of kin the option of donating, or requesting the donation of, the organs of a decedent. Congress enacted the National Organ Transplant Act in 1984 prohibiting the purchase of organs in interstate commerce and providing grants to organ procurement agencies and a national organ-sharing system. The Act also provides for appointment of a Task Force on Organ Transplantation to conduct a comprehensive examination of organ donation and procurement, organ sharing within the United States, access by patients to donor organs and transplant procedures, diffusion and adoption of organ transplant technology, and future directions in research. The Task Force submitted a report in

April 1986 entitled “Organ Transplantation: Issues and Recommendations.”
Among the findings:

“An overriding problem common to all organ transplantation programs as well as to the well-established programs in tissue banking (for corneal, skin and bone transplantation) is the serious gap between the need for the organs and tissues and the supply of donors. Despite substantial support for transplantation and a general willingness to donate organs and tissues after death, the demand far exceeds the supply. At any one time, there are an estimated 8,000 to 10,000 people waiting for a donor organ to become available.”

Citing a recommendation of the Task Force, the bill for the reconciliation of the 1987 budget amended the Social Security Act to require that hospitals, as a condition to receiving Medicare or Medicaid after October 1, 1987, establish written protocols “for the identification of potential organ donors that [make families] ... aware of the option of organ or tissue donation and their option to decline.” (P.L. 99-509 § 9318).

Several amendments to the Uniform Act have been made since it was promulgated in 1968. In 1980, the NCCUSL voted to make optional the language that previously required the donor card to be signed “in the presence of two witnesses who must sign the document in his presence.” Amendments have been made by several states authorizing individuals other than doctors to remove eyes and to address specific emerging problems. As a result, the objective of the 1968 Uniform Act has been eroded, i.e., “When generally adopted, even if the place of death, or the residence of the donor, or the place of use of the gift occurs in a state other than that of the execution of the gift, uncertainty as to the applicable law will be eliminated and all parties will be protected.”

In 1984, the Executive Committee of NCCUSL approved the appointment of a study committee, and then in 1985 of a drafting committee, to propose amendments to the Uniform Anatomical Gift Act. The Committee has consulted with individuals and national organizations involved in organ procurement about possible changes in the generic provisions of the Uniform Act and to solicit comments and suggestions. A first draft of proposed amendments to the Uniform Act was considered at the annual meeting of NCCUSL in 1986.

The sequence of sections in the original Act has been changed, to combine the concept of “persons who may make an anatomical gift” (original Section 2), “manner of making anatomical gifts” (original Section 4), and “amendment or revocation of the gift” (original Section 6). The authorization of gifts by next of kin or a guardian of the person contained in Section 2 of the original Act is Section 3 of the amended Act. Several subsections of the original Act have been shifted to

accommodate change in title and sequential arrangement of sections of the Act as amended. These changes are noted in the Comments. The scope of the Act continues to be limited to procurement. It does not cover processing except for a provision requiring coordination of procurement and utilization between hospitals and procurement organizations (Section 9). It does not cover distribution except for a provision prohibiting sale or purchase (Section 10).

The proposed amendments simplify the manner of making an anatomical gift and require that the intentions of a donor be followed. For example, no witnesses are required on the document of gift (Section 2(b)) and consent of next of kin after death is not required if the donor has made an anatomical gift (Section 2(h)). The identification of actual donors is facilitated by a duty to search for a document of gift (Section 5(c)) and of potential donors by the provisions for routine inquiry (Section 5(a)) and required request (Section 5(b)). A gift of one organ, e.g., eyes, is not a limitation on the gift of other organs after death, in the absence of contrary indication by the decedent (Section 2(j)). The right to refuse to make an anatomical gift and the manner of expressing the refusal are specified (Section 2(i)). Revocation by a donor of an anatomical gift that has been made is effective without communication of the revocation to a specified donee (Section 2(f)). Hospitals have been substituted for attending physicians as donees of anatomical gifts (Section 6(b)), and they are required to establish agreements or affiliations with other hospitals and procurement organizations in the region to coordinate the procurement and utilization of anatomical gifts (Section 9). If a request for an anatomical gift has been made for transplant or therapy by a person specified in the Act and if there is no contrary indication by the decedent or known objection by the next of kin to an anatomical gift, the [coroner] [medical examiner] or [local public health official] may authorize release and removal of a part subject to specific requirements (Section 4(a) and (b)). The categories of persons that may remove anatomical parts are expanded to include eye enucleators and certain technicians (Section 8(c)). The sale or purchase of parts is prohibited (Section 10). Persons who act, or attempt to act, in good faith in accordance with the terms of the Act are not liable in any civil action or criminal proceeding. The categories of persons covered by this exemption are specified (Section 11(c)).

The growing promise of transplantation was described in the Hastings Center Report:

“It is now possible to transplant vital organs such as hearts, livers and kidneys. Efforts are currently underway to perfect the transplantation of the heart and lung together, the pancreas and the small bowel. Post-mortem donors of these vital organs must have sustained brain death under circumstances in which their respiration and circulation can be supported artificially.

“Other human tissue such as corneas, bone and inner ear parts and skin can be utilized to restore important biological functions. These tissues may be removed some time after circulation and respiration have ceased. The cornea, for example, remains suitable for removal for transplantation for approximately six hours after the donor’s heart has stopped beating.”

UNIFORM ANATOMICAL GIFT ACT (1987)

SECTION 1. DEFINITIONS. As used in this [Act]:

(1) “Anatomical gift” means a donation of all or part of a human body to take effect upon or after death.

(2) “Decedent” means a deceased individual and includes a stillborn infant or fetus.

(3) “Document of gift” means a card, a statement attached to or imprinted on a motor vehicle operator’s or chauffeur’s license, a will, or other writing used to make an anatomical gift.

(4) “Donor” means an individual who makes an anatomical gift of all or part of the individual’s body.

(5) “Enucleator” means an individual who is [licensed] [certified] by the [State Board of Medical Examiners] to remove or process eyes or parts of eyes.

(6) “Hospital” means a facility licensed, accredited, or approved as a hospital under the law of any state or a facility operated as a hospital by the United States government, a state, or a subdivision of a state.

(7) “Part” means an organ, tissue, eye, bone, artery, blood, fluid, or other portion of a human body.

(8) “Person” means an individual, corporation, business trust, estate, trust, partnership, joint venture, association, government, governmental subdivision or agency, or any other legal or commercial entity.

(9) “Physician” or “surgeon” means an individual licensed or otherwise authorized to practice medicine and surgery or osteopathy and surgery under the laws of any state.

(10) “Procurement organization” means a person licensed, accredited, or approved under the laws of any state for procurement, distribution, or storage of human bodies or parts.

(11) “State” means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(12) “Technician” means an individual who is [licensed] [certified] by the [State Board of Medical Examiners] to remove or process a part.

Comment

This is Section 1 of the original Act. Definitions (1) “Anatomical Gift” and (3) “Document of Gift” have been added to reduce the length and complexity of operative provisions of the Act.

In subsection (2) the committee decided it was unnecessary to expand the definition of “decedent” to include the definition of death contained in the Uniform Determination of Death Act. That Act provides:

“An individual who has sustained either irreversible cessation of circulatory and respiratory functions or irreversible cessation of all functions of the entire brain, including the brain stem, is dead. A determination of death must be made in accordance with accepted medical standards.”

Almost all states have similar definitions either by statute or appellate court decisions.

The Report to Congress of the Task Force appointed under the 1984 National Organ Transplant Act (P.L. 98-507) recommends:

“... that the Uniform Determination of Death Act be enacted by the legislatures of states that have not adopted this or a similar act. ... that each state medical association develop and adopt model hospital policies and protocols for the determination of death based upon irreversible cessation of brain function that will be available to guide hospitals in developing and implementing institutional policies and protocols concerning brain death.”

In subsections (5) and (12), the individuals authorized to remove a part have been expanded to include enucleators for eyes and technicians. Satisfactory completion of a prescribed course of training and experience is a prerequisite to certification of these nonphysician specialists. The type of certification and the person making it are bracketed. It may be done by a professional peer group organization, an organ procurement organization, agency or association, or by a hospital or state agency.

In subsection (10), “procurement organization” has been substituted for “bank or storage facility” and the function has been expanded to include procurement and distribution to reflect the diffusion of function, i.e., procurement, distribution or storage, and of objective, i.e., organs, tissues, eyes, bones, skin,

fluids, etc. In the case of solid or visceral organs, they must be removed while bodily functions of the decedent are sustained with life support systems. If solid or visceral organs are not involved, life support systems are not required, although there are time limits following death within which removal must be completed, e.g., six hours in the case of eyes.

SECTION 2. MAKING, AMENDING, REVOKING, AND REFUSING TO MAKE ANATOMICAL GIFTS BY INDIVIDUAL.

(a) An individual who is at least [18] years of age may (i) make an anatomical gift for any of the purposes stated in Section 6(a), (ii) limit an anatomical gift to one or more of those purposes, or (iii) refuse to make an anatomical gift.

(b) An anatomical gift may be made only by a document of gift signed by the donor. If the donor cannot sign, the document of gift must be signed by another individual and by two witnesses, all of whom have signed at the direction and in the presence of the donor and of each other, and state that it has been so signed.

(c) If a document of gift is attached to or imprinted on a donor's motor vehicle operator's or chauffeur's license, the document of gift must comply with subsection (b). Revocation, suspension, expiration, or cancellation of the license does not invalidate the anatomical gift.

(d) A document of gift may designate a particular physician or surgeon to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the anatomical gift may employ or authorize any physician, surgeon, technician, or enucleator to carry out the appropriate procedures.

(e) An anatomical gift by will takes effect upon death of the testator, whether or not the will is probated. If, after death, the will is declared invalid for testamentary purposes, the validity of the anatomical gift is unaffected.

(f) A donor may amend or revoke an anatomical gift, not made by will, only by:

(1) a signed statement;

(2) an oral statement made in the presence of two individuals;

(3) any form of communication during a terminal illness or injury addressed to a physician or surgeon; or

(4) the delivery of a signed statement to a specified donee to whom a document of gift had been delivered.

(g) The donor of an anatomical gift made by will may amend or revoke the gift in the manner provided for amendment or revocation of wills, or as provided in subsection (f).

(h) An anatomical gift that is not revoked by the donor before death is irrevocable and does not require the consent or concurrence of any person after the donor's death.

(i) An individual may refuse to make an anatomical gift of the individual's body or part by (i) a writing signed in the same manner as a document of gift, (ii) a statement attached to or imprinted on a donor's motor vehicle operator's or chauffeur's license, or (iii) any other writing used to identify the individual as refusing to make an anatomical gift. During a terminal illness or injury, the refusal may be an oral statement or other form of communication.

(j) In the absence of contrary indications by the donor, an anatomical gift of a part is neither a refusal to give other parts nor a limitation on an anatomical gift under Section 3 or on a removal or release of other parts under Section 4.

(k) In the absence of contrary indications by the donor, a revocation or amendment of an anatomical gift is not a refusal to make another anatomical gift. If the donor intends a revocation to be a refusal to make an anatomical gift, the donor shall make the refusal pursuant to subsection (i).

Comment

The major structural changes from the original Act are found in Sections 2 and 3. The persons who may make an anatomical gift are divided into the individual donor (new Section 2) and next of kin or guardians of the person (new Section 3). The manner of executing (old Section 4), and amending or revoking (old Section 6) anatomical gifts are incorporated in new Section 2 as well as provisions of other sections that involve "making, amending, revoking, and refusing to make anatomical gifts by the individual." Provisions of old Section 2 that do not relate directly to this topic have been shifted to later sections. In the original Act there is the following Comment:

“To minimize confusion there is merit in having a uniform provision throughout the country. Also it is desirable to enlarge the class of possible donors as much as possible. Subsection (a) of Section 2, providing that any person of sound mind and 18 years or more of age may execute a gift, will afford both nationwide uniformity and a desirable enlargement of the class of donors. Persons 18 years of age or more are of sufficient maturity to make the required decisions and the Uniform Act takes advantage of this fact.”

In subsection (a) the Act has been expanded by inserting the right to refuse to make an anatomical gift. The absence of a donor card or the lack of an entry authorizing a gift on a driver’s license are ambiguous and are not “contrary indications” of a decedent preventing an anatomical gift by next of kin under Section 2(b) of the original Act. This amendment and a provision specifying the manner of making a refusal (subsection (i)) provide the option to individuals who are definitely opposed to the donation for any purpose or of any part of their body as an anatomical gift. If the donor wishes to limit the anatomical gift to a specific purpose, e.g., transplantation, or to a specified part, e.g., eyes, the limitation must be stated clearly, i.e., “transplantation only,” “eyes only.”

Subsection (b) incorporates the provisions of Section 4(b) of the original Act. Section 4(a) of the original Act has been relocated to subsection (e) to reflect the change from using wills to choosing other forms of documents of gift to make anatomical gifts.

The requirement of two witnesses signing a donor card or other document of gift has been deleted to simplify the making of anatomical gifts. Self authentication of a document of gift by a donor who cannot sign relieves the donee of the duty to search for the witnesses upon death of the donor.

In the original Act there were several forms included in the Comments with this admonition:

“As the Uniform Act becomes widely accepted it will prove helpful if the forms by which gifts are made are similar in each of the participating states. Such forms should be as simple and understandable as possible.”

The forms in these Comments are suggested for the 1987 Act.

ANATOMICAL GIFT BY A LIVING DONOR

Pursuant to the Anatomical Gift Act, upon my death, I hereby give (check boxes applicable):

- 1. Any needed organs, tissues, or parts;
- 2. The following organs, tissues, or parts only _____;
- 3. For the following purposes only _____.

(transplant-therapy-research-education)

Date of Birth

Signature of Donor

Date Signed

Address of Donor

INSTRUCTIONS

Check box 1 if the gift is unrestricted, i.e., of any organ, tissue, or part for any purpose specified in the Act; do not check box 2 or box 3. If the gift is restricted to specific organ(s), tissue(s), or part(s) only, e.g., heart, cornea, etc., check box 2 and write in the organ or tissue to be given. If the gift is restricted to one or more of the purposes listed, e.g., transplant, therapy, etc., check box 3 and write in the purpose for which the gift is made.

A gift category included in some forms “of my body for anatomical study if needed” has not been included. Although a gift of the entire body is authorized by the Act, the exercise of this option usually requires an agreement with a medical school before a gift is made.

A simple form of refusal under the Act could provide:

Pursuant to the Anatomical Gift Act, I hereby refuse to make any anatomical gift.

Date of Birth

Signature of Declarant

Date of Signing

Address of Declarant

Subsection (c) incorporates an amendment to the original Act in many states providing that an anatomical gift may be made by an attachment to the driver's license. The cross reference to subsection (b) incorporates the concept that a signature is required. A signature on the driver's license or on the card attached to the driver's license is sufficient. The hospital or other donee may rely on the anatomical gift even though the license has expired or has been terminated by official act.

The following form is suggested for attachment to the driver's license:

Print or Type Name of Donor

Pursuant to the Anatomical Gift Act, upon my death, I hereby give (check boxes applicable):

1. Any needed organs, tissues, or parts;
2. The following organs, tissues, or parts only _____;
3. For the following purposes only _____;
(transplant-therapy-research-education)

Refusal:

4. I refuse to make any anatomical gift.

Signature

INSTRUCTIONS

See Section 2(b) Comments. If the applicant for a driver's license refuses to make any anatomical gift, check box 4 only.

Subsection (d) is Section 4(d) of the original Act.

Subsection (e) is a restatement of Section 4(a) of the original Act.

Subsection (f) is a restatement of Section 6(a) and (b) of the original Act.

Subsection (g) is Section 6(a) of the original Act.

Subsection (h) states expressly the intention of the original Act that an anatomical gift not revoked by the donor cannot be revoked after the donor's death by any other person. This was explicit in the Comments to the original Act: "Subsection (e) [of Section 2] recognizes and gives legal effect to the right of the individual to dispose of his own body without subsequent veto by others." The Hastings Center Report cited the results of a telephone survey of organ procurement agencies in the United States in 1983 as follows:

"... the survey revealed that few transplant centers were willing to procure organs solely on the basis of a donor card or driver's license consent by the deceased. In situations in which family members could not be located, less than twenty-five percent of the respondents said they would proceed with organ procurement despite the presence of a written directive."

This subsection removes any uncertainty.

Subsection (i) expands the original Act by providing a method of refusing to make an anatomical gift. A potential donor has several options. The donor may make an anatomical gift (Section 2(a)), may express or imply a contrary indication that an anatomical gift shall not be made (Section 2(j)(k)), or may refuse to make an anatomical gift (Section 2(i)). Contrary indications may include membership in organizations that do not approve of organ donation, statements or actions by the potential donor that are inconsistent with organ donations, etc. To be effective as a limitation on a gift by next of kin under Section 3 or on a release of a part by other persons under Section 4, after death, the contrary indications must be known to the persons authorized to act under Sections 3 and 4. The option of refusal to make an anatomical gift provided for by subsection (i) is a method of documenting contrary indications that might not be communicated otherwise and therefore not effective as a limitation on next of kin and other persons authorized to give or release a part under Sections 3 and 4 of the Act. If the potential donor is unable to speak because of paralysis or other disability, any form of communicating a refusal is sufficient, e.g., responding to a direct inquiry by a nod of the head, squeeze of the hand, blink of eyes, etc.

Subsection (j) addresses the problem of donor cards that have been circulated by various organizations and that appear to limit the anatomical gift to only one organ, e.g., eyes, kidneys, etc. This type of card should not be construed as an expression of the intention of the donor to limit the anatomical gift to that organ only, in the absence of a refusal to give other organs or of other contrary indications.

Subsection (k) provides that a revocation of an anatomical gift made previously by a donor is neither a refusal to make any anatomical gift nor a contrary

indication by the donor that no part shall be given or released for any purpose authorized by the Act. It merely restores the donor to the status of an individual who has neither made nor refused to make an anatomical gift. In the absence of any other action or contrary indication by that individual before death, the next of kin or guardian of the person may make an anatomical gift pursuant to Section 3 or the appropriate person may authorize release and removal of a part pursuant to Section 4.

An amendment of an anatomical gift made previously by the donor, whether the amendment relates to a part or a purpose, is not a refusal nor a limitation on a gift or release of other parts for any purpose specified in the Act. If the amendment is intended to be a refusal it must be expressed clearly as provided in subsection (i).

Revocation or amendment of a previous anatomical gift is ambiguous. It does not indicate an intention of the donor to refuse to make an anatomical gift. This subsection removes that ambiguity.

SECTION 3. MAKING, REVOKING, AND OBJECTING TO ANATOMICAL GIFTS, BY OTHERS.

(a) Any member of the following classes of persons, in the order of priority listed, may make an anatomical gift of all or a part of the decedent's body for an authorized purpose, unless the decedent, at the time of death, has made an unrevoked refusal to make that anatomical gift:

- (1) the spouse of the decedent;
- (2) an adult son or daughter of the decedent;
- (3) either parent of the decedent;
- (4) an adult brother or sister of the decedent;
- (5) a grandparent of the decedent; and
- (6) a guardian of the person of the decedent at the time of death.

(b) An anatomical gift may not be made by a person listed in subsection (a) if:

- (1) a person in a prior class is available at the time of death to make an anatomical gift;

(2) the person proposing to make an anatomical gift knows of a refusal or contrary indications by the decedent; or

(3) the person proposing to make an anatomical gift knows of an objection to making an anatomical gift by a member of the person's class or a prior class.

(c) An anatomical gift by a person authorized under subsection (a) must be made by (i) a document of gift signed by the person or (ii) the person's telegraphic, recorded telephonic, or other recorded message, or other form of communication from the person that is contemporaneously reduced to writing and signed by the recipient.

(d) An anatomical gift by a person authorized under subsection (a) may be revoked by any member of the same or a prior class if, before procedures have begun for the removal of a part from the body of the decedent, the physician, surgeon, technician, or enucleator removing the part knows of the revocation.

(e) A failure to make an anatomical gift under subsection (a) is not an objection to the making of an anatomical gift.

Comment

Section 3 combines Sections 2(b) and 4(e) of the original Act, clarifies the limited right of revocation by next of kin and provides for the effect of failure to make a gift by persons other than the donor. Subsection (a), as explained in Comments to the original Act:

“... spells out the right of survivors to make the gift. Taking into account the very limited time available following death for the successful removal of such critical tissues as the kidney, the liver, and the heart, it seems desirable to eliminate all possible question by specifically stating the rights of and the priorities among the survivors.”

The Act defines an anatomical gift as one “to take effect upon or after death.” Survivors may execute the necessary documents of gift even prior to death. The following form is suggested:

Anatomical Gift by Next of Kin or
Guardian of the Person

Pursuant to the Uniform Anatomical Gift Act, I hereby make this anatomical gift from the body of _____ who died on _____ at
Name of Decedent Date
_____ in _____. The marks in the appropriate squares
Place City and State
and the words filled into the blanks below indicate my relationship to the decedent and my wishes respecting the gift.

I survive the decedent as spouse; adult son or daughter; parent; adult brother or sister; grandparent; guardian of the person.

I hereby give (check boxes applicable):

- Any needed organs, tissues, or parts;
- The following organs, tissues, or parts only _____;
- For the following purposes only _____.

Date

Signature of Survivor

Address of Survivor

INSTRUCTIONS

See Section 2(b) Comments.

As described in the Comments to the original Act, subsection (b):

“... provides for the effect of indicated objections by the decedent, and differences of view among the survivors. . . . In view of the fact that persons under 18 years of age are excluded from [Section 2] (a), it is especially desirable to cover with care the status of survivors, so younger decedents may be included.”

“Knows” is substituted for “actual notice” in subsection (b) and throughout the Act. Knowledge, i.e., what is known, is a more useful concept than actual notice, i.e., what should be known.

Subsection (c) is Section 4(e) of the original Act with the addition of “other form of communication.”

Subsection (d) limits the right of revocation of a gift made by other survivors pursuant to subsection (a). If there is no prior knowledge of the revocation by the individual removing the organ or tissue, the revocation is ineffective for any purpose and the anatomical gift may be procured and utilized as though no attempted revocation had occurred.

Subsection (e) is based on the concept that failure to act is ambiguous. This subsection removes that ambiguity. If a person of a prior class under subsection (a) is available but does not make a gift, subsection (e) authorizes a gift by a person of a lower class. If an anatomical gift is not made pursuant to Section 3, the provisions of Section 4 apply.

SECTION 4. AUTHORIZATION BY [CORONER] [MEDICAL EXAMINER] OR [LOCAL PUBLIC HEALTH OFFICIAL].

(a) The [coroner] [medical examiner] may release and permit the removal of a part from a body within that official’s custody, for transplantation or therapy, if:

(1) the official has received a request for the part from a hospital, physician, surgeon, or procurement organization;

(2) the official has made a reasonable effort, taking into account the useful life of the part, to locate and examine the decedent’s medical records and inform persons listed in Section 3(a) of their option to make, or object to making, an anatomical gift;

(3) the official does not know of a refusal or contrary indication by the decedent or objection by a person having priority to act as listed in Section 3(a);

(4) the removal will be by a physician, surgeon, or technician; but in the case of eyes, by one of them or by an enucleator;

(5) the removal will not interfere with any autopsy or investigation;

(6) the removal will be in accordance with accepted medical standards;
and

(7) cosmetic restoration will be done, if appropriate.

(b) If the body is not within the custody of the [coroner] [medical examiner], the [local public health officer] may release and permit the removal of any part from a body in the [local public health officer's] custody for transplantation or therapy if the requirements of subsection (a) are met.

(c) An official releasing and permitting the removal of a part shall maintain a permanent record of the name of the decedent, the person making the request, the date and purpose of the request, the part requested, and the person to whom it was released.

Comment

Under Section 2(b) of the original Act, the last category of persons authorized to make an anatomical gift “in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or a prior class” was:

“(6) any other person authorized or under obligation to dispose of the body.”

This was a residuary authorization, to apply in situations in which an individual did not “give all or any part of his body for any purpose” and the next of kin or guardian of the person did not make a gift. This residuary authorization in the original Act has been deleted in the proposed amendments and replaced by the more limited provisions of new Section 4.

It is a residuary authorization for transplant or therapeutic purposes only.

The Task Force on Organ Transplantation reported that the number of potential donors annually is much smaller than the estimated one million deaths that occur each year in hospitals in the United States. The Hastings Center Report explained the uncertainty:

“There is no generally accepted figure for the number of persons who die each year in the United States under circumstances that would allow them to serve as cadaver organ donors. Studies conducted by the Centers for Disease Control of the U.S. Public Health Service suggest that at least 12,000 [based upon an age range of brain-dead donors from five to fifty-five years] and perhaps as many as 27,000 [based upon an age range of brain-dead donors from birth to age sixty-five] deaths which would permit cadaver organ recovery occur each year in hospitals in the United States. . . . Given the available estimates of the size of the donor pool, the current system for procuring organs yields somewhere between nine and twenty percent of the possible pool of donors for various types of organs and tissues.”

In several states, there are statutes authorizing the medical examiner to remove eyes or corneal tissue under specified circumstances. These statutes are constitutional, *Georgia Lions Eye Bank Inc. v. Lavant*, 255 Ga. 60, 335 S.E.2d 127, 129 (1985) – “The protection of the public health is one of the duties devolving upon the State as a sovereign power;” cert. denied 475 U.S. 1084, 106 S.Ct. 1464, 89 L. ed 721 (1986); *Florida v. Powell*, Fla., 497 So.2d 1188 (1986). There has been a significant increase in the number of corneal tissues available for transplant as a result of these statutes. For example, before passage of the statute in Georgia in 1978 approximately 25 corneal transplants were performed each year. In 1984, more than 1,000 persons regained their sight through transplants. In Florida, the increase was from 500 to more than 3,000.

Section 4 applies this statutory concept to the removal of “any part from a body” for transplant or therapy only. Specific circumstances must exist and conditions for removal are prescribed. The title of the public official is bracketed to permit each state to designate the appropriate official. There is a variation among existing statutes in the requirement to inform or seek consent of next of kin before organs or tissues are removed. In several states, including Georgia and Florida, there is no requirement to inform or seek consent if the other conditions prescribed by statute are satisfied. In others, information and consent are required. Subsection (a)(2) seeks to balance societal and family interests, that is, to increase the size of the donor pool and to give the family the opportunity to make or refuse to make an anatomical gift. The balance in this subsection is on the side of increasing the size of the donor pool. The duty to search the medical record or to inform next of kin is limited to “a reasonable effort taking into account the useful life of the part” This reflects a concern expressed in the Comments to the original Act: “... the very limited time available following death for the successful recovery of such critical tissues” The time will vary depending upon the part involved. In the case of corneal tissue, the time is within six hours after death. In the case of organs, the need, availability, and efficacy of life support systems must be considered. If removal must be immediate and there is no medical or other record and no person specified in Section 3(a) is present, the requirement of subsection (a)(2) is satisfied.

Subsection (b) is a companion provision to subsection (a) to cover similar situations but in cases where the [coroner] [medical examiner] is not authorized to act. Under both subsections, the removal and release is limited to transplant or therapeutic purposes.

**SECTION 5. ROUTINE INQUIRY AND REQUIRED REQUEST;
SEARCH AND NOTIFICATION.**

(a) On or before admission to a hospital, or as soon as possible thereafter, a person designated by the hospital shall ask each patient who is at least [18] years of age: “Are you an organ or tissue donor?” If the answer is affirmative the person shall request a copy of the document of gift. If the answer is negative or there is no answer and the attending physician consents, the person designated shall discuss with the patient the option to make or refuse to make an anatomical gift. The answer to the question, an available copy of any document of gift or refusal to make an anatomical gift, and any other relevant information, must be placed in the patient’s medical record.

(b) If, at or near the time of death of a patient, there is no medical record that the patient has made or refused to make an anatomical gift, the hospital [administrator] or a representative designated by the [administrator] shall discuss the option to make or refuse to make an anatomical gift and request the making of an anatomical gift pursuant to Section 3(a). The request must be made with reasonable discretion and sensitivity to the circumstances of the family. A request is not required if the gift is not suitable, based upon accepted medical standards, for a purpose specified in Section 6. An entry must be made in the medical record of the patient, stating the name and affiliation of the individual making the request, and of the name, response, and relationship to the patient of the person to whom the request was made. The [Commissioner of Health] shall [establish guidelines] [adopt regulations] to implement this subsection.

(c) The following persons shall make a reasonable search for a document of gift or other information identifying the bearer as a donor or as an individual who has refused to make an anatomical gift:

(1) a law enforcement officer, fireman, paramedic, or other emergency rescuer finding an individual who the searcher believes is dead or near death; and

(2) a hospital, upon the admission of an individual at or near the time of death, if there is not immediately available any other source of that information.

(d) If a document of gift or evidence of refusal to make an anatomical gift is located by the search required by subsection (c)(1), and the individual or body to whom it relates is taken to a hospital, the hospital must be notified of the contents and the document or other evidence must be sent to the hospital.

(e) If, at or near the time of death of a patient, a hospital knows that an anatomical gift has been made pursuant to Section 3(a) or a release and removal of

a part has been permitted pursuant to Section 4, or that a patient or an individual identified as in transit to the hospital is a donor, the hospital shall notify the donee if one is named and known to the hospital; if not, it shall notify an appropriate procurement organization. The hospital shall cooperate in the implementation of the anatomical gift or release and removal of a part.

(f) A person who fails to discharge the duties imposed by this section is not subject to criminal or civil liability but is subject to appropriate administrative sanctions.

Comment

Each individual upon admission to a hospital is asked a series of routine questions, such as “Do you have insurance?” and “Are you allergic to any drugs?” Subsection (a) adds to the list a routine inquiry about organ donation. It requires that a question be asked to identify organ donors and mandates discussion about organ donation, after the consent of the attending physician, with those who answer in the negative. If there is an affirmative response, a request is made for the organ donor card, driver’s license, or other document of gift to determine if there are limitations, e.g., of a particular part (eyes) or of a particular purpose (transplant only) and to place a copy in the medical record as evidence of a valid gift to be effective at death. Although the amendment is limited to the admission process of hospitals, doctors are encouraged to include a similar routine inquiry of patients in their office procedures and hospitals are encouraged to extend the routine inquiry to outpatient, emergency, minor surgery, and similar procedures that do not require admission to the hospital.

Among the major findings of the Hastings Center Report was the following:

“While many Americans believe that signing a donor card or other written directive assures that their wishes will be respected and acted upon, it does not. . . . Few, if any, organs are donated solely on the basis of donor cards or written directives. Written directives are only effective if hospital protocols and practices are designed to discover and act upon the contents of such directives.”

Subsection (b) is a variation of the required request concept. All but a few states have passed a variety of required request statutes since 1985. Some specify that next of kin be informed of the option to give, others that a request to give be made. Federal law requires written protocols by hospitals participating in Medicare or Medicaid that “assure that families of potential organ donors are made aware of the option of organ or tissue donation and their option to decline.” Subsection (b) requires a discussion of the option and, if there is no response, a request to make an anatomical gift. No discussion or request is necessary if the medical record

discloses a prior gift or a refusal to make a gift or if the gift would not be suitable according to accepted medical standards.

The requirement is imposed on the institution. The title of the chief executive officer should be substituted for [administrator]. “Representative” is not limited to employees of the hospital. It may be a doctor, organ procurement specialist, etc.

Subsection (c) is based upon the Uniform Duties to Disabled Persons Act promulgated by NCCUSL in 1972. The purpose of that Act is to provide, insofar as practicable, for a minimum level of duty towards persons in an unconscious state and toward those who are conscious but otherwise unable to communicate the existence of a condition requiring special treatment.

Subsection (d) reflects a conclusion of The Hastings Center Report:

“Donor cards are often not found at accident sites, and even when they are, they are rarely located in hospital settings when needed.”

This subsection requires that the hospital be notified as soon as a document of gift or refusal is located and that it be sent to the hospital with the individual or the body to which it relates, not taken to the hospital at some later time. Notification of the hospital of the existence and the contents of the document will enable the hospital to notify the organ procurement organization if there is a gift, that there is a potential donor, and the limitations, if any, of the gift.

Subsection (e) incorporates a recommendation of The Task Force Report pursuant to the National Organ Transplant Act of 1984 that “The Commission for Uniform State Laws develop model legislation that requires acute care hospitals to develop an affiliation with an organ procurement agency and to adopt routine inquiry policies and procedures.” The present draft incorporates this recommendation in Sections 5 and 9.

Subsection (f) encourages hospital accrediting agencies, law enforcement, and other state agencies that have existing disciplinary procedures to impose sanctions for failure to discharge the duties imposed by Section 5.

SECTION 6. PERSONS WHO MAY BECOME DONEES; PURPOSES FOR WHICH ANATOMICAL GIFTS MAY BE MADE.

(a) The following persons may become donees of anatomical gifts for the purposes stated:

(1) a hospital, physician, surgeon, or procurement organization, for transplantation, therapy, medical or dental education, research, or advancement of medical or dental science;

(2) an accredited medical or dental school, college, or university for education, research, advancement of medical or dental science; or

(3) a designated individual for transplantation or therapy needed by that individual.

(b) An anatomical gift may be made to a designated donee or without designating a donee. If a donee is not designated or if the donee is not available or rejects the anatomical gift, the anatomical gift may be accepted by any hospital.

(c) If the donee knows of the decedent's refusal or contrary indications to make an anatomical gift or that an anatomical gift by a member of a class having priority to act is opposed by a member of the same class or a prior class under Section 3(a), the donee may not accept the anatomical gift.

Comment

Subsection (a) is Section 3 of the original Act changed to combine subsections (1) and (3) and to reverse the sequence of purposes for which anatomical gifts may be made, i.e., transplantation followed by therapy rather than education, research, therapy, or transplantation. This emphasizes transplantation as a primary purpose.

Subsection (b) is a restatement of Section 4(c) of the original Act which provided that the attending physician would be the donee under specified circumstances. Hospitals are substituted for the attending physician. This will facilitate coordination of procurement and utilization of the gift pursuant to Section 9.

Subsection (c) is substantially Section 2(c) of the original Act. The last sentence has been deleted because it does not apply to donees or purposes.

SECTION 7. DELIVERY OF DOCUMENT OF GIFT.

(a) Delivery of a document of gift during the donor's lifetime is not required for the validity of an anatomical gift.

(b) If an anatomical gift is made to a designated donee, the document of gift, or a copy, may be delivered to the donee to expedite the appropriate procedures after death. The document of gift, or a copy, may be deposited in any hospital, procurement organization, or registry office that accepts it for safekeeping or for facilitation of procedures after death. On request of an interested person, upon or after the donor's death, the person in possession shall allow the interested person to examine or copy the document of gift.

Comment

Subsection (a) is the last sentence of Section 4(b) of the original Act.

Subsection (b) is Section 5 of the original Act. The Comments to that subsection include the following:

“... in the great majority of the states, no provision is made for filing, recording, or delivery to the donee. The gift is by implication effective without such formality. ... permissive filing provisions [are included] to expedite post mortem procedures.”

SECTION 8. RIGHTS AND DUTIES AT DEATH.

(a) Rights of a donee created by an anatomical gift are superior to rights of others except with respect to autopsies under Section 11(b). A donee may accept or reject an anatomical gift. If a donee accepts an anatomical gift of an entire body, the donee, subject to the terms of the gift, may allow embalming and use of the body in funeral services. If the gift is of a part of a body, the donee, upon the death of the donor and before embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the person under obligation to dispose of the body.

(b) The time of death must be determined by a physician or surgeon who attends the donor at death or, if none, the physician or surgeon who certifies the death. Neither the physician or surgeon who attends the donor at death nor the physician or surgeon who determines the time of death may participate in the procedures for removing or transplanting a part unless the document of gift designates a particular physician or surgeon pursuant to Section 2(d).

(c) If there has been an anatomical gift, a technician may remove any donated parts and an enucleator may remove any donated eyes or parts of eyes, after determination of death by a physician or surgeon.

Comment

In subsection (a) the first sentence is a restatement of Section 2(e) of the original Act. The remainder of the subsection is Section 7(a) of the original Act.

The Comments to the original Act state:

“Subsection 2(e) recognizes and gives legal effect to the right of the individual to dispose of his own body without subsequent veto by others. . . . If the donee accepts the gift, absolute ownership vests in him. . . . The only restrictions are that the part must be removed without mutilation and the remainder of the body vests in the next of kin.”

Subsection (b) is a restatement of Section 7(b) of the original Act.

The Comments to that original subsection include the following:

“... because time is short following death for a transplant to be successful, the transplant team needs to remove the critical organ as soon as possible. Hence there is a possible conflict of interest between the attending physician and the transplant team, and accordingly subsection (b) excludes the attending physician from any part in the transplant procedures. . . . However, the language of the provision does not prevent the donor’s attending physician from communicating with the transplant team or other relevant donees. This communication is essential to permit the transfer of important knowledge concerning the donor”

SECTION 9. COORDINATION OF PROCUREMENT AND USE. Each hospital in this State, after consultation with other hospitals and procurement organizations, shall establish agreements or affiliations for coordination of procurement and use of human bodies and parts.

Comment

Among the recommendations of the Task Force pursuant to the 1984 National Organ Transplant Act, was the following:

“The Joint Commission on the Accreditation of Hospitals develop a standard that requires all acute care hospitals to both have an affiliation with an organ procurement agency and have formal policies and procedures for identifying potential organ and tissue donors and providing next of kin with appropriate opportunities for donation.”

The failure of a hospital to establish the agreements or affiliations specified in this section will not affect gifts made to the hospital or gifts by patients in the hospital.

SECTION 10. SALE OR PURCHASE OF PARTS PROHIBITED.

(a) A person may not knowingly, for valuable consideration, purchase or sell a part for transplantation or therapy, if removal of the part is intended to occur after the death of the decedent.

(b) Valuable consideration does not include reasonable payment for the removal, processing, disposal, preservation, quality control, storage, transportation, or implantation of a part.

(c) A person who violates this section is guilty of a [felony] and upon conviction is subject to a fine not exceeding [\$50,000] or imprisonment not exceeding [five] years, or both.

Comment

The report of the Task Force pursuant to the 1984 National Organ Transplant Act recommended that states pass laws prohibiting “the sale of organs from cadavers or living donors within their boundaries.”

This section is not limited to donors. It applies to any person and to both purchases and sales for transplantation or therapy. It does not cover the sale by living donors if removal is intended to occur before death.

A major finding of the Hastings Center Report is:

“Altruism and a desire to benefit other members of the community are important moral reasons which motivate many to donate. Any perception on the part of the public that transplantation unfairly benefits those outside the community, those who are wealthy enough to afford transplantation, or that it is undertaken primarily with an eye toward profit rather than therapy will severely imperil the moral foundations, and thus the efficacy of the system.”

SECTION 11. EXAMINATION, AUTOPSY, LIABILITY.

(a) An anatomical gift authorizes any reasonable examination necessary to assure medical acceptability of the gift for the purposes intended.

(b) The provisions of this [Act] are subject to the laws of this State governing autopsies.

(c) A hospital, physician, surgeon, [coroner], [medical examiner], [local public health officer], enucleator, technician, or other person, who acts in accordance with this [Act] or with the applicable anatomical gift law of another state [or a foreign country] or attempts in good faith to do so is not liable for that act in a civil action or criminal proceeding.

(d) An individual who makes an anatomical gift pursuant to Section 2 or 3 and the individual's estate are not liable for any injury or damage that may result from the making or the use of the anatomical gift.

Comment

Subsection (a) is Section 2(d) of the original Act.

The purpose of this subsection was explained in a Comment to the original Act:

“[It] is added at the suggestion of members of the medical profession who regard a post mortem examination, to the extent necessary to ascertain freedom from disease that might cause injury to the new host for transplanted parts, as essential to good medical practice.”

Subsection (b) is a restatement of Section 7(d) of the original Act. The Comments to the original Act gave the reason for this subsection:

“[It] is necessary to preclude the frustration of the important medical examiners' duties in cases of death by suspected crime or violence. However, since such cases often can provide transplants of value to living persons, it may prove desirable in many if not most states to reexamine and amend, the medical examiner statutes to authorize and direct medical examiners to expedite their autopsy procedures in cases in which the public interest will not suffer.”

In 1986 the Task Force on Organ Transplantation made a similar recommendation:

“To enact laws that would encourage coroners and medical examiners to give permission for organ and tissue procurement from cadavers under their jurisdiction.”

Subsection (c) is a restatement of Section 7(c) of the original Act. It provided in part that “a person who acts in good faith” Concern was expressed

that the term person was not sufficiently descriptive and may be construed to exclude hospitals and individuals. The present provision is more explicit. “Attempts to act in good faith” has also been added to the subsection.

Subsection (d) provides for limitation of liability for the benefit of the individual making a gift under the Act and that individual’s estate. Some states have amended the uniform act by describing an anatomical gift as a service and not a sale or disclaiming any warranty of the part that is given. Similar provisions are found in statutes relating to blood banks.

SECTION 12. TRANSITIONAL PROVISIONS. This [Act] applies to a document of gift, revocation, or refusal to make an anatomical gift signed by the donor or a person authorized to make or object to making an anatomical gift before, on, or after the effective date of this [Act].

SECTION 13. UNIFORMITY OF APPLICATION AND CONSTRUCTION. This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.

SECTION 14. SEVERABILITY. If any provision of this [Act] or its application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

SECTION 15. SHORT TITLE. This [Act] may be cited as the “Uniform Anatomical Gift Act (1987).”

SECTION 16. REPEALS. The following acts and parts of acts are repealed:

- (1)
- (2)
- (3)

SECTION 17. EFFECTIVE DATE. This [Act] takes effect

_____.