Uniform Anatomical Gift Act (2006)

A Summary

Every hour another person dies waiting for an organ transplant. Despite significant technological improvements and numerous publicity campaigns over the past several decades, the substantial shortage for organs, tissues and eyes for life-saving or life-improving transplants continues. This shortage persists despite efforts by the federal government and every state legislature to improve the system. The National Conference of Commissioners on Uniform State Laws (NCCUSL) continues to be a leader in developing the law in the organ transplant arena, and it has promulgated the Uniform Anatomical Gift Act (2006) to further improve the system for allocating organs to transplant recipients.

The original Uniform Anatomical Gift Act was promulgated in 1968, shortly after Dr. Christian Barnard's successful transplant of a heart in November, 1967. It was promptly and uniformly enacted in every jurisdiction. The 1968 UAGA created the power, not yet recognized at common law, to donate organs, eyes and tissue, in an immediate gift to a known donee or to any donee that might need an organ to survive. In 1987, NCCUSL revised the 1968 UAGA to address changes in circumstances and in practice. Only 26 states enacted the 1987 UAGA, resulting in non-uniformity between those states and the states that retained the 1968 version. Subsequent changes in each state over the years have resulted in even less uniformity. In addition, neither the 1968 nor the 1987 UAGA recognizes the system of organ procurement that has developed partly under federal law. The 2006 UAGA is an effort to resolve any perceived inconsistencies thereby adding to the efficiency of the current system.

The scope of the 2006 UAGA is limited to donations from deceased donors as a result of gifts made before or after their deaths. Organ donation is a purely voluntary decision that must be clearly conveyed before an individual's organs are available for transplant.

The current mechanism for donating organs is a document of gift that an individual executes before death. The 2006 Act further simplifies the document of gift and accommodates the forms commonly found on the backs of driver's licenses in the United States. It also strengthens the power of an individual not to donate his or her parts by permitting the individual to sign a refusal that also bars others from making a gift of the individual's parts after the individual's death. Importantly, the 2006 UAGA strengthens prior language barring others from attempting to override an individual's decision to make or refuse to make an anatomical gift.

If an individual does not prepare a document of gift, organs may still be donated by those close to the individual. Another achievement of the 2006 UAGA is that it allows certain individuals to make an anatomical gift for another individual during that individual's lifetime. Health-care agents under a health-care power of attorney and, under certain circumstances, parents or a guardian, have this power. The donor must be incapacitated and the permission

giver has to be the individual in charge of making health-care decisions during the donor's life. Second, the 2006 UAGA adds several new classes of persons to the list of those who may make an anatomical gift for another individual after that individual's death. The adoption of clear rules and procedures, combined with the definition of "reasonably available," provide clarity to the decision-making process. If more than one member of a class is reasonably available, the donation is made only if a majority of members support the donation. Minors, if eligible under other law to apply for a driver's license, are empowered to be a donor. These seemingly minor changes will provide more opportunities for donation than currently exist today.

The 2006 UAGA encourages and establishes standards for donor registries and better enables procurement organizations to gain access to documents of gift in donor registries, medical records, and records of a state motor vehicle department. This access will make it much easier for procurement organizations to quickly determine whether an individual is a donor. And, under Section 8 of the 2006 UAGA, which strengthens the language regarding the finality of a donor's anatomical gift, there is no reason to seek consent from the donor's family because the family has no legal right to revoke the gift. The practice of procurement organizations seeking affirmation even when the donor has clearly made a gift results in unnecessary delays in procuring organs and the occasional reversal of the donor's wishes. One exception is if the donor is a minor and the parents wish to revoke the gift. The 2006 UAGA acknowledges that the decision to donate organs, tissues and eyes is highly personal and deserves respect from the law.

The tension between a health-care directive requesting the withholding or withdrawal of life-support systems and a donor's wish to make an anatomical gift is resolved by permitting, prior to the removal of life-support systems, the administration of measures necessary to ensure the medical suitability of the donor's organs. The 2006 UAGA provides that a general direction in a power of attorney or health-care directive that the patient does not wish to have life prolonged by the administration of life-support systems should not be construed as a refusal to donate.

The 2006 UAGA provides numerous default rules for interpreting a document of gift if it lacks specificity regarding the persons to receive the gift or the purposes of the gift. One important rule, not present in the prior acts, is the prioritization of transplantation or therapy over research or education, when a document of gift sets forth all four purposes but fails to establish a priority.

Another improvement that the 2006 UAGA achieves is the clarification and expansion of rules relating to cooperation and coordination between procurement organizations on the one hand and coroners and medical examiners on the other. Unlike prior law, the 2006 UAGA prohibits coroners and medical examiners from making anatomical gifts except in the rare instance when the coroner or medical examiner is the person with the authority to dispose of the decedent's body. The 2006 UAGA complies with the policy guidelines articulated by the National Association of Medical Examiners.

The 2006 UAGA also addresses widely reported abuses involving the intentional falsification of a document of gift or refusal, to obtain a financial gain by selling a decedent's

parts to a research institution. A person who falsifies a document of gift for such a purpose is guilty of a felony. Alternatively, the 2006 UAGA provides that a person acting in accordance with the act or with the applicable anatomical gift law of another state, or that attempts to do so in good faith, is not liable for his or her actions in a civil action, criminal prosecution or administrative proceeding.

Finally, the last section provides for repeal of the prior UAGA, whether it is the 1968 or 1987 version. Many states, however, have related laws on anatomical gifts that should be retained, such as donor awareness programs, Transplant Councils, and licensing provisions for procurement organizations and health care providers. However, it is highly desirable that the core provisions of the 2006 UAGA be uniform among the states. Little time is available to prepare, transport across state lines, and transplant life-saving organs, let alone to assess and comply with significant variations in state law.

The anatomical gift law of the states is no longer uniform, and diversity of law is an impediment to transplantation. Harmonious law through every state's enactment of the 2006 UAGA will help save and improve lives. It should be enacted in every state as quickly as possible.