

D R A F T

FOR DISCUSSION ONLY

**REVISED
UNIFORM ANATOMICAL GIFT ACT (200_)**

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

November 2005 Meeting

WITH PREFATORY NOTE AND COMMENTS

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By
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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REVISED UNIFORM ANATOMICAL GIFT ACT

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1 **REVISED UNIFORM ANATOMICAL GIFT ACT (200_)**

2 Prefatory Note

3 The first reported medical transplant occurred in the third century. However, medical
4 miracles flowing from transplants are truly a modern story beginning in the first decade of the
5 twentieth century with the first successful transplant of a cornea. But, not until three events
6 occurred in the twentieth century, in addition to the development of surgical techniques to
7 effectuate a transplant, could organ transplants become a viable option to save and meaningfully
8 extend lives.

9
10 The first event was the development in the late 60s of the first set of neurological criteria
11 for determining death. These criteria allowed persons to be declared dead upon the cessation of
12 all brain activity. Ultimately these criteria, together with the historic measure of determining
13 death by cessation of circulation and respiration, were incorporated into Section 1 of the
14 Uniform Determination of Death Act providing that: “An individual who has sustained either (1)
15 irreversible cessation of circulatory and respiratory functions, or (2) irreversible cessation of all
16 functions of the entire brain, including the brain stem, is dead.”

17
18 Then, shortly following Dr. Christian Barnard’s successful transplant of a heart in
19 November 1967, this Conference adopted the first Uniform Anatomical Gift Act and it did it
20 with only one reading in the summer of 1968. In short order, the 1967 Act was uniformly
21 adopted by every jurisdiction. The most significant contribution of the ‘68 Act was to create a
22 right to donate organs. This right was not legally recognized at common law because of
23 reluctance to find property rights in human bodies or human remains. By creating the right to
24 make an anatomical gift, individuals became empowered to donate their organs or their loved
25 one’s organs to save the lives of others.

26
27 The last event, occurring in 1972, was the development of immunosuppressive drugs
28 which prevented organ recipients from rejecting transplanted organs. This permitted many more
29 successful organ transplants, thus contributing to the rapid growth in the demand for organs and
30 the need for changes in the law to facilitate the making of anatomical gifts.

31
32 In 1987, a revised Uniform Anatomical Gift Act was promulgated to address changes in
33 circumstances and in practice. However, only twenty-six (26) jurisdictions enacted the 1987
34 revision. Consequently, there is significant non-uniformity between states with the 1968 Act and
35 those with the 1987 revisions. Further, current state acts do not always comport with changes in
36 federal law adopted subsequent to the 1987 Act relating to the role of hospitals and organ
37 procurement organizations in securing organs for transplantation.

38
39 Both the two previous anatomical gift acts as well as this [act] adhere to the so-called
40 “opt in” principle as its default rule. Thus, an individual becomes an organ donor only if the
41 donor or someone acting on the donor’s behalf affirmatively makes an anatomical gift. The
42 system universally adopted in this country is contrary to that adopted in many other developed
43 countries, primarily in Europe. In many European countries every individual is deemed to be an

1 organ donor unless that individual, or another person acting for that individual, “opts out.” This
2 other system is known as “presumed consent.” While the Commissioners do not believe that
3 many states would currently be interested in enacting a presumed consent system, many of them
4 believe that in time the concept of presumed consent could receive a favorable reception in this
5 country.

Comment: Should we include information from polls. Transcript: Commissioner Langbein would encourage us to develop some bracketed language for states interested in adopting a “presumed consent” system.

6
7 This [act] is limited in scope to donations from deceased donors as a result of gifts made
8 before or after their deaths. Although recently there has been a significant increase in so-called
9 “living donations” where a living donor immediately donates an organ (typically kidney or a
10 section of a liver) to a recipient, donations by living donors are not treated in this [act], as
11 distinct and difficult legal issues are raised by living donations. Furthermore, and in common
12 with the prior acts, this [act] is largely focused on the procurement of organs as federal law
13 controls the allocation of procured organs. Provisions in this [act] relating to the procurement of
14 organs are intended to dovetail with federal law and policies.

15
16 A majority of potential donors are candidates for donation of eye or tissue but only a
17 small percentage of potential donors die under circumstances that permit organ donation. To
18 procure organs, eyes, and tissue for transplantation, a donor or potential donor must be declared
19 dead (see Uniform Determination of Death Act), and generally the donor’s body must be kept on
20 a respirator and life support until the organs are procured. Pursuant to federal law, when death is
21 imminent or death occurs, the appropriate organ procurement organization is notified of a
22 potential donor or donor, and it begins to develop a medical and family history to determine
23 whether the dying or deceased person is a suitable donor. If the dying or deceased person is a
24 suitable donor, these organizations check for evidence of donation and seek, when necessary,
25 consent to donation from authorized persons. If a donation can be secured for organs, the organ
26 procurement organization will ascertain from the organ procurement and transplant network
27 whether there is a match for the organs on the national waiting list; arrange teams of surgeons at
28 both the donor and recipient hospitals; and arrange transport; and effect the transplantation. If
29 eyes and tissue are donated, the appropriate procurement organization procures the eye or
30 portions of human eyes and/or other tissues and undertakes steps to begin the screening, testing,
31 processing, storage, or distribution of the eye or portions of human eyes and/or other tissues as
32 required for each type of anatomical gift for transplantation. All must be done expeditiously.

33
34 As of August 15, 2005, there are 89,094 individuals on the waiting list for organs of
35 which 62,685 need a kidney and 17,457 a liver, with the remaining individuals waiting for a
36 pancreas, kidney and pancreas, heart, lung or intestine. There are in excess of 25,000 eye and
37 tissue donors annually and in excess of 1,000,000 tissue and eye transplants annually. While
38 donations of eye and tissue are presently nearly adequate, the need for eye and tissue transplants
39 increases every year.

Comment: Update

40
41 Recent technological innovations have increased the types of organs that can be
42 transplanted and the range of individuals that can donate or receive an organ, thereby increasing
43 the numbers of organs available each year and the number of transplantations that occur each
44 year. Nonetheless, the number of deaths for lack of available organs has also increased. While
45 the Commissioners are under no illusion that any anatomical gift act can fully supply the need

1 for organs, they do believe that any change that could increase the supply of organs and thus
2 saves lives is an improvement. This is all the more true because in recent years the shortage in
3 the supply has been partially made up by the significant increase in the number of living donors
4 who have donated organs for transplantation. While organs from living donors are laudable and
5 often medically desirable from the recipient's perspective, obtaining organs from living donors
6 places those donors at risk.

7
8 Transplantation occurs across state boundaries and requires speed and efficiency. Thus,
9 uniformity of state law is highly desirable. Furthermore, the decision to be a donor is a highly
10 personal decision of great generosity and deserves the highest respect from the law. Because
11 current state anatomical gift laws are out of harmony with both federal procurement and
12 allocation policies and do not fully respect the autonomy interests of donors, there is a need to
13 both harmonize state law with federal policy as well as to increase the manner in which
14 anatomical gifts can be made and respected. The following summary highlights how this [act]
15 attempts to accomplish these goals.

16
17 Section 2 incorporates new definitions of organ procurement organizations, eye banks
18 and tissue banks to harmonize with federal law as necessary.

19
20 Section 4 expands the number of persons who can make an anatomical gift on behalf of a
21 donor during the donor's lifetime. The expanded list includes agents acting under a health-care
22 power of attorney or other record, parents of donors under age 18, and guardians. The section
23 also recognizes that it is appropriate that minors who can apply for a driver's license and mature
24 minors who are capable of making health-care decisions for themselves be empowered to make
25 anatomical gifts.

26
27 Section 5 recognizes that since the adoption of the prior anatomical gift acts some states
28 and many private organizations have created donor registries for the purpose of making
29 anatomical gifts. Thus, in addition to evidencing a gift on a donor card or driver's license, this
30 [act] allows for the making of anatomical gifts on donor registries. The section also permits
31 anatomical gifts by notation in a donor's medical records.

32
33 Section 6 permits anatomical gifts to be amended or revoked by the execution of a later-
34 dated record or by inconsistent documents of gifts. It also permits revocation by destruction of a
35 document of gift.

36
37 Section 7 permits an individual to refuse to make an anatomical gift by a signed record, a
38 notation on a driver's license or registry if permitted by the state motor vehicle department or
39 operator of the donor registry, or by a statement or symbol in the donor's medical records. This
40 [act] does not require that a driver's license or a donor registry allow for individuals to register
41 their refusal to be a donor. By permitting refusals, the [act] recognizes the autonomy interest of
42 an individual either to be or not to be an organ donor.

43
44 Section 8 is intended to substantially strengthen the respect due a decision to make or
45 refuse to make an anatomical gift. While prior laws provided that a donor's anatomical gift was

Comment: Should we include comment regarding the differences between this [act] and the '87 version, or at least information as to what of the earlier act was preserved.

1 irrevocable, it had been until quite recently a common practice for procurement organizations to
2 seek affirmation of that gift from a donor's family. This could result in unnecessary delays in the
3 harvesting of organs as well as a reversal of a donor's donation decision. This [act] effectively
4 dis-empowers families from making or refusing to make anatomical gifts in contravention of a
5 donor's wishes. Thus, under the strengthened language of this [act] if a donor had made an
6 anatomical gift, there is no reason to seek consent from a donor's family as they have no ability
7 to give it legally. Of course, that would not bar, nor should it bar, a procurement organization
8 from advising the donor's family of the donor's express wishes but that conversation should be
9 focused more on what procedures will be followed to carry out the donor's wishes rather than on
10 seeking approval of the donation.

11
12 Section 9 expands the list of persons who can make an anatomical gift following a
13 decedent's death where the decedent was neither a donor nor had signed a record refusing to be a
14 donor. The expanded list includes persons acting as agents at the decedent's death,
15 grandchildren, and close friends.

16
17 Section 10 makes no significant changes from prior law.

18
19 Section 11 represents a complete revision of the relationship of the coroner to the organ
20 donation process. Prior law permitted the [coroner][medical examiner] under limited
21 circumstances to make anatomical gifts of the eyes of a decedent in the [coroner's][medical
22 examiner's] possession. In light of a series of Section 1983 actions in which the
23 [coroner][medical examiner]'s actions were deemed to violate the property rights of surviving
24 family members, see, e.g., *Brotherton v. Cleveland*, 923 F.2d 477 (6th Cir. 1991), the
25 Commissioners decided to delete the provision. In lieu thereof, a series of new provisions have
26 been included relating to the relationship between the [coroner][medical examiner] and the
27 procurement organizations. The intent of these provisions is to encourage meaningful
28 cooperation between these groups in hopes of increasing the number of anatomical gifts.
29 Importantly, the section does not permit a [coroner][medical examiner] to make an anatomical
30 gift. Rather, parts from a decedent can be the subject of an anatomical gift only if an anatomical
31 gift was made under Section 4 or Section 9 of this [act] .

32
33 Section 12 permits the search of the personal effects of an individual who has died or is
34 near death by an emergency responder in order to determine if that individual has made or has
35 refused to make an anatomical gift. It also requires persons with access to the motor vehicle
36 registry to make a similar search and requires hospitals to search donor registries.

37
38 Section 13 has been revised, in part, to harmonize with federal law, particularly with
39 respect to organs. Under federal law, organs are allocated under the auspices of the Organ
40 Procurement and Transplant Network which presently subcontracts with United Network Organ
41 Sharing operating largely through its member organ procurement organizations. When an organ
42 donor dies, the donor's organs, barring the rare instance of a donation to a named individual, are
43 donated to the organ procurement organization for the service area in which the donor dies, to be
44 allocated by it either locally, regionally, or nationally in accordance with federal policies. Thus,
45 that organ procurement organization for the overwhelming number of organ donations is the

1 donee. For eyes, tissue and whole body donations, donees can be the appropriate procurement
2 organization, or a hospital, accredited medical or dental school, college, university or other
3 person participating in education or research. In the case of organ, tissue and eye donation,
4 therefore, the donee is an organization, not the recipient into whom the part is transplanted.
5

6 Prior law did not specifically deal with who the donee of a part was when the document
7 of gift merely expressed a “general intent” to be an “organ donor.” This type of designation is
8 common on driver’s licenses and many donor cards. Section 13 provides that for such general
9 statements of intent, first, the parts may only be used for transplantation or therapy and second,
10 that the donee is the appropriate organization procurement organization for each part. Thus,
11 organs are donated to the organ procurement organization, eyes to the eye bank, and tissue to the
12 tissue bank.
13

14 A general statement of intent to be an organ donor does not result in the making of an
15 anatomical gift for research or education. More specific language is required to make such a gift.
16

17 The [act] provides that custody of a decedent’s body if there is no donee or of decedent’s
18 parts not used by a donee for transplantation, therapy, research or education vests in the “person
19 under obligation to dispose of the body.” Typically that person will be someone in the decedent’s
20 family as determined by other law or by the terms of the document of gift.
21

22 Section 13(g) prohibits any donee from accepting an anatomical gift if the donee knows
23 that the gift was not validly made. For this purpose, however, if the donee ascertained there was
24 a document of gift from a donor registry or from the donor’s medical records, the donee is also
25 deemed to know of a refusal to make a gift if the refusal is on the same donor registry or in the
26 donor’s medical records for the same health care provider in whose records the donation had
27 been recorded. Again, nothing in the [act] requires a donor registry to have a section to record
28 refusals, but if a donor registry elected to do so, then the donee should be required to search the
29 entire registry.
30

31 Lastly, Section 13(h) makes the obvious explicit. Nothing in this [act] affects the
32 allocation of parts by any person acting under federal laws relating to the allocation of parts for
33 transplantation.
34

35 Section 15 also has been redrafted to accord with federal law and particularly the federal
36 rules relating to referrals by hospitals to organ procurement organizations to determine whether a
37 person dead or near death is a potential donor. See 42 CFR § 482.45 (Condition of participation:
38 Organ, tissue, and eye procurement). The right of the procurement organization to inspect a
39 patient’s medical records does not violate HIPAA as a result of an express exemption in the
40 applicable federal regulations. See 45 CFR § 164.512(h) (“A covered entity may use or disclose
41 protected health information to organ procurement organizations or other entities engaged in the
42 procurement, banking, or transplantation of cadaveric organs, eyes, or tissue for the purpose of
43 facilitating organ, eye or tissue donation and transplantation.”)
44

Comment: Should we limit this just to transplantation? The issue has been raised whether therapy is broader and may not be consistent with what donors would expect would happen with their organs.

1 Subsection (e) tracts prior law and is designed to assure that no conflict of interest exists
2 for a patient's treating physician where that physician is also treating another individual whom
3 may be in need of a transplant. Some surveys have suggested that a small segment of the
4 population believes that a patient who might die without proper medical attention may not be
5 treated in order that the patient's organs can be used for another. While there is absolutely no
6 evidence that this has ever occurred in this country, this section was included to address some
7 public misperceptions by making clear that it should not be able to happen legally.

8
9 Section 17: To be provided.

10
11 Section 19 was included in this [act] to facilitate interstate recognition of documents of
12 gifts.

1 **REVISED UNIFORM ANATOMICAL GIFT ACT (200_)**

2
3
4 **SECTION 1. SHORT TITLE.** This [act] may be cited as the Revised Uniform

5 Anatomical Gift Act.

6 **SECTION 2. DEFINITIONS.** In this [act]:

7 (1) "Agent" means an individual authorized by:

8 (A) a health-care power of attorney to make health-care decisions on
9 behalf of the principal; or,

10 (B) any other record to make an anatomical gift on behalf of the principal.

11 (2) "Anatomical gift" means the donation of all or part of a human body to take
12 effect after the donor's death.

13 (3) "Decedent" means a deceased individual whose body or part is the source of
14 an anatomical gift for the purposes of transplantation, therapy, research, or education purposes.

15 (4) "Document of gift" means a [donor] card or other record used to make an
16 anatomical gift. The term includes a will and a statement or symbol attached to or imprinted on a
17 license to operate a vehicle, or identification card issued by a state, a donor registry, or the
18 donor's medical records.

19 (5) "Donee" means a person to which an anatomical gift has been made under
20 Section 13.

21 (6) "Donor" means an individual who made an anatomical gift of the individual's
22 part or body. The term includes a decedent.

23 (7) "Donor registry" means a registry that provides for the making, amendment,
24 or revocation of an anatomical gift or the refusal to make an anatomical gift.

Comment: Do we need to say that the power is valid under state law.

Comment: Would "upon" be the better word here? See 5(e) as a comparison. The '87 act said "upon or after death"

Comment: This insert ties in with changes in sections 4 and 6 relating to making and refusing to make anatomical gifts.

Comment: Style would add "who made such a gift" following the word "decedent." I disagree. First, decedent is defined above. So it can not include all persons who die as suggested in the style draft in fn 10. Second, the word "donor" is intended to include decedent on whose behalf donations were made. [1]

Comment: Transcript: Commissioner Lisman raised question of whether we want to include provisions regarding donor registries. Transcript [2]

1 (8) “Enucleator” means an individual who is qualified and trained by an
2 organization that is [licensed] [accredited] [regulated] [under federal or state law] to remove or
3 process eyes or parts of eyes.

4 (9) “Eye bank” means a person that is [licensed] [accredited][regulated][under
5 federal or state law] to engage in the recovery, screening, testing, processing, storage, or
6 distribution of human eyes or portions of human eyes

7 (10) “Health-care provider” means an individual licensed, certified, or otherwise
8 authorized or permitted by law to provide health care in the ordinary course of business or
9 practice of a profession. The term includes a physician.

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

Comment: Can we constitutionally do this?

13 (12) “Know” means to have actual knowledge.

14 (13) “Organ procurement organization” means a person designated by the
15 Secretary of Health and Human Services pursuant to the laws of the United States as an organ
16 procurement organization.

17 (14) “Part” means an organ, eye, or tissue of a human being.

18 (15) “Person” means an individual, corporation, business trust, estate, trust,
19 partnership, limited liability company, association, joint venture, public corporation,
20 government, or governmental subdivision, agency or instrumentality, or any other legal or
21 commercial entity.

22 (16) “Physician” means an individual authorized to practice medicine [or
23 osteopathy] under the law of any state.

1 (17) “Procurement organization” means an eye bank, organ procurement
2 organization, or tissue bank.

3 (18) “Reasonably available” means able to be contacted without undue effort and
4 willing and able to act in a timely manner consistent with existing medical criteria necessary for
5 the making of an anatomical gift.

6 (19) “Recipient” means an individual into whom a decedent’s part has been or is
7 intended to be transplanted.

8 (20) “Record” means information that is inscribed on a tangible medium or that
9 is stored in an electronic or other medium and is retrievable in perceivable form.

10 (21) “Sign” means, with the present intent to authenticate a record:

11 (A) to execute or adopt a tangible symbol; or

12 (B) to attach or logically associate an electronic symbol, sound, or
13 process to or with a record.

14 (22) “State” means a state of the United States, the District of Columbia, Puerto
15 Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or
16 insular possession subject to the jurisdiction of the United States.

Comment: Should we be adding this? A commissioner inquired about this?

17 (23) “Technician” means an individual who is qualified and trained by an
18 organization that is [accredited] [licensed] [regulated] [under federal or state law] to remove or
19 process a body part.

20 (24) “Tissue bank” means a person that is [licensed] [accredited] [regulated]
21 [under federal or state law] to engage in the recovery, screening, testing, processing, storage, or
22 distribution of human tissue.

23 **Comment**

1 Under Section 4 of this [act] an individual may make an anatomical gift of the
2 individual’s parts. In addition designated other persons may make an anatomical gift of the
3 individual’s organs. One of these persons is an “agent” of that individual (paragraph (1)). An
4 agent, as defined in paragraph (1), may be so empowered in one of two ways. The first is by a
5 designation under a health-care power of attorney. This statute, independent of any other law,
6 empowers the agent acting under a health care power of attorney to make an anatomical gift on
7 behalf of a principal. Therefore, it is not necessary that states adopting this [act] amend their
8 health-care power of attorney statutes to specifically empower agents to make anatomical gifts
9 on behalf of principals as this [act] empowers them to make such gifts. On the other hand, a state
10 may choose to do so in order that all of the agent’s powers, including the power to make an
11 anatomical gift, can be found in one comprehensive statute. Even though this [act] empowers
12 the agent acting under a health-care power to act, if the health-care power denies that power to
13 the agent, the agent is not empowered to make an anatomical gift on behalf of the principal. See
14 Section 4(b).

15
16 An agent may also be designated by a record, other than a health care power of attorney,
17 that authorizes the agent to make an anatomical gift on behalf of the principal. This would permit
18 individuals who wish to empower different persons to make health care decisions and anatomical
19 gift decisions to do so. In light of the definition of record, this authority also could be expressed
20 in a financial power of attorney.

21
22 This [act], in common with both the ‘68 and ‘87 versions, only applies to an “anatomical
23 gift” that take effect after death. Thus, an “anatomical gift” would not include a gift of an organ
24 made from a living donor to another living individual.

25
26 A “document of gift” (paragraph (4)) includes a will, other record, and a statement or
27 symbol on either a license to operate a vehicle or identification card issued by the state, a donor
28 registry (paragraph (7)), or a donor’s medical record. The prior versions of the act referred to a
29 motor vehicle operator’s or chauffeur’s license. Both of these continue to be included within the
30 phrase “license to operate a vehicle” but the phrase also encompasses other licenses such as a
31 state-issued motorcycle operator’s license. While a donor card is a record, the reference to donor
32 card has been specifically retained because of the wide acceptance of that concept in our culture.

33
34 A statement or symbol on a license, card, registry, or medical record is the document of
35 gift; it is not merely an expression of intent to make a gift. Therefore, where there is such a
36 statement or symbol, no other document of gift is necessary to evidence the making of an
37 anatomical gift. Nonetheless, potential donors should be encouraged to make their gifts by
38 license or registry, as gifts on a license or registry are more likely to be discovered when the
39 donor is dead or near death.

Comment: The use of a medical record to make a gift is new to this draft. Does the committee approve?

40
41 Under Section 5(c) an anatomical gift can be made by a donor authorizing the person
42 maintaining a registry to include on the registry a statement or symbol that the donor has made a
43 gift. By adding a “donor registry” to as a device for making an anatomical gift, this [act]
44 recognizes the increasing use of donor registries to make anatomical gifts. The use of donor
45 registries was not contemplated at the time either the ‘68 or ‘87 versions of this act were

1 adopted. Today, however, they have assumed increased importance in the anatomical gift world
2 and in time may come to dominate how anatomical gifts are made. While the format of donor
3 registries differ, generally they allow for the making of an anatomical gift of one or more parts
4 and permit that gift to be made over the internet. No known registry provides for a refusal to
5 make an anatomical gift and this [act] does not require that they do so. The operator of the
6 registry may, if it chooses, follow up an electronic registration by sending the donor a card to
7 sign. However, that is not legally required by this [act] to make an effective gift. To the extent
8 that the donor registry complies with the laws relating to electronic signatures the gift would also
9 meet the requirements of Section 4(a) of a signed record.

Comment: R
elate this to a
discussion of
Section 4.

10
11 Although anatomical gifts can be made by or on behalf of an individual from whom the
12 donated part would be removed at death, only the individual from whom the part is or would be
13 removed is a “donor” (paragraph (6)). A decedent whose body or part is the subject of an
14 anatomical gift is also a donor even though someone other than decedent before or after the
15 decedent’s death signed the document of gift. Thus “donor” may in some cases refer to a living
16 individual who made an anatomical gift or on whose behalf an anatomical gift was made, or a
17 decedent whose body or part is the subject of an anatomical gift. Anatomical gifts by a donor, as
18 well as amendments, revocations, and refusals can trump the ability of others to make or revoke
19 anatomical gifts on behalf of the donor. See Section 8.

20
21 The definition of “part” (paragraph 14) while shorter than the definition in the ‘87 Act is
22 functionally the same as all parts of the human body, including bones and fluids, are
23 encompassed within the definition.

Comment: Is
this correct?

24
25 The concept of “reasonably available” (paragraph (18)) is based upon a similar concept
26 in the Uniform Health-Care Decisions Act. A decision to make an anatomical gift, particularly of
27 an organ, by persons, other than the donor, is extremely time sensitive. Life-saving organs may
28 be forfeited if persons with a priority to make a post-death anatomical gift cannot be located to
29 make a decision. Physical presence, however, is not required in order to be “reasonably
30 available.” A person is “reasonably available” as long as the person can be contacted without
31 undue effort. Also, the concept assumes that a person is willing to act in a timely manner to
32 permit the successful recovery of organs. A person who is unwilling to make a decision to either
33 donate or refuse to donate in a timely manner is not considered to be “reasonably available.” See
34 Section 10(e).

35
36 **SECTION 3. APPLICABILITY.** This [act] applies to a document of gift, revocation,
37 or refusal to make an anatomical gift made before, on, or after [the effective date of this act].

38 **Comment**

39 Because this [act] applies to documents of gifts executed before the [act’s] effective date,
40 statements on a driver’s license which are deemed only to be evidence of an intent to be a donor
41 now constitute actual words of donation and the license is a document of gift.
42

1
2 **SECTION 4. WHO MAY MAKE AN ANATOMICAL GIFT BEFORE**

3 **DECEDENT’S DEATH.** Subject to Section 8, an anatomical gift of an individual’s body or
4 part for transplantation, therapy, research, or education may be made during the life of the
5 individual in the manner provided in Section 5 by:

6 (a) the individual, if the individual is:

7 (1) at least [18] years of age;

8 [(2) a minor otherwise authorized under state law to make personal health-
9 care decisions or apply for a motor vehicle license or permit.]

10 [(3) an emancipated minor];

11 (b) an agent of the individual unless the power of attorney to make health-care
12 decisions or other record prohibits the agent from making an anatomical gift;

13 (c) a parent of the individual, if the individual is under the age of [18] years [and
14 not emancipated]; or

15 (d) the [guardian] of the person of the individual.

16 **Comment**

17 Structurally, this [act] includes within Sections 4 through 8 provisions that were included
18 in Section 2 of the ‘87 act. Thus, Section 4 relates to who can make an anatomical gift before a
19 decedent dies, Section 5 relates to the manner in which an anatomical gift can be made, Section 6
20 relates to the amending and revoking of an anatomical gift, Section 7 relates to the refusal to
21 make an anatomical gift, and Section 8 relates to the effect of gifts, amendments, revocations,
22 and refusals on the ability of others to make an anatomical gift .

23
24 Like the predecessor acts, this [act] provides that an individual may make an anatomical
25 gift of that individual’s body or parts if that individual is at least [18] years of age. This act,
26 however, expands upon prior law in a number of ways. First, the [act] recognizes that in many
27 states individuals under the age of 18 are permitted to make personal health care decisions.
28 These individuals are often referred to as “mature minors.” See, e.g., *Cardwell v. Bectol*, 724
29 S.W.2d 739 (Tenn. 1987); *In re E.G.*, 549 N.E.2d 322 (Ill. 1990) (and cases cited there). The
30 making of an anatomical gift is analogous to the making of a health care decision; thus it is

Comment: Commissioner English suggests that this be tied to any individual who under other law is entitled to apply for a driver’s license. For example, this could read: “eligible to apply for a driver’s license under the laws of this state.” If we went that route, would we retain (a)(2).

Comment: Added in response to comment of Commissioner Stieff and others.

1 appropriate to permit such a minor to make an anatomical gift. In many, if not most cases, these
2 minors will also include minors who, under state law, may apply for a driver’s license. Thus, if a
3 minor, when applying for a driver’s license, makes an anatomical gift by a symbol or statement
4 on a driver’s license, that minor would be a donor. There would be no need for the minor to have
5 the license reissued at age 18, assuming the license had not otherwise expired, in order to
6 continue to be a donor.

7
8 This section expands prior law in other important respects. It permits anatomical gifts by
9 an emancipated minor and it expressly empowers an anatomical gift to be made on behalf of an
10 individual by that individual’s agent or by a parent, if that individual is under the age of [18], or
11 a guardian.

12
13 A gift by an agent, parent, or guardian remains in effect until such time as amended or
14 revoked by an agent, parent, or guardian or the individual on whose behalf the gift was made. As
15 an example, if a parent makes a gift for a minor, the gift remains in effect until such time as it is
16 altered by the donor or by the donor’s agent or guardian. However, under Section 6, agents,
17 parents, or guardians cannot refuse to make an anatomical gift on behalf of their principals or
18 wards. A refusal can only be made by that individual whose part or body might otherwise have
19 been the subject of an anatomical gift.

20
21 As noted in the comments to the definitions, an agent acting under a health-care power of
22 attorney is authorized merely by that designation to make an anatomical gift on behalf of the
23 principal. If the principal does not wish to authorize the agent to make that decision, the power
24 would have to include language to expressly negate that authority. On the other hand, if the agent
25 is acting under another record, such as a financial power of attorney, the agent would be
26 empowered to make an anatomical gift only if that authority was expressly conferred in the
27 record.

28
29 **SECTION 5. MANNER OF MAKING ANATOMICAL GIFT BEFORE**

30 **DECEDENT’S DEATH.**

31 (a) An anatomical gift may be made by a [donor] card or other record signed by
32 the person making the gift. If the person making the gift cannot sign the [donor] card or other
33 record, the [donor] card or other record must be signed on the person’s behalf by an individual
34 acting at the person’s direction and by at least two witnesses, both of whom have signed at the
35 request of the person, and the record must state that it has been so signed.

36 (b) An anatomical gift may be made by authorizing the health care provider of the

Comment: Do we need a definition here?

1 donor to enter into the donor's medical records a statement or symbol indicating that an
2 anatomical gift has been made.

3 (c) A donor may make an anatomical gift by authorizing the [insert reference to
4 motor vehicle department] to imprint on the donor's license to operate a vehicle or identification
5 card issued by a state a statement or symbol indicating that the donor has made an anatomical
6 gift. Revocation, suspension, expiration, or cancellation of the donor's license or card does not
7 invalidate the anatomical gift.

8 (d) A donor may make an anatomical gift by authorizing any person that
9 maintains a donor registry to include on the donor registry a statement or symbol that the donor
10 has made an anatomical gift.

11 (e) A donor may make an anatomical gift by a will. An anatomical gift made by
12 will takes effect upon the donor's death whether or not the will is probated. The invalidation of
13 the will after the donor's death does not invalidate the anatomical gift.

Comment: Style would delete as "superfluous" Do we agree?

14 **Comment**

15 The execution formalities associated with the making of an anatomical gift generally
16 remain the same as under the '87 act. However, in addition to the making of a gift by a [donor]
17 card, will, or state-issued driver's license, an anatomical gift can also be made on a state-issued
18 identification card or upon a donor registry or on the donor's medical records. The '87 act
19 required an anatomical gift imprinted on a license to be signed by the donor. This [act] does not
20 expressly require a signature on a license, a donor registry, or the donor's medical records,
21 although one or more of these may actually have a signature to the extent they comply with the
22 laws relating to electronic signatures.

23
24 Donor registries were not contemplated by the prior versions of this [act]. Since the
25 promulgation of those acts, numerous donor registries have been created under the auspices of
26 the state or private organizations. Nothing in this [act] either requires the creation of a donor
27 registry or mandates the content of a donor registry. For example, the typical donor registry
28 allows for the making of donations but not the refusal to be an organ donor. This [act] does not
29 require that a registry provide an opportunity to refuse to be an organ donor.

30
31 Section 5(a) permits an anatomical gift by a signed donor card or other record. Typically

1 the person making an anatomical gift will be able sign the record. In those cases where the
2 person making the gift is unable to sign the record, the signature can be made by an individual
3 acting at the request of the person making the donation. This signature, however, must be
4 witnessed by two witnesses acting at the request of the person making the donation. Thus, if a
5 donor cannot sign a record, it can be signed by X if X and the two witnesses act at the donor's
6 request. In addition, the record must state that it was signed and witnessed at the person's
7 request. Section 5(a) is not limited to anatomical gifts by a donor. For example, if a guardian for
8 an adult makes a gift but cannot sign the record, then the record can be signed by another and
9 witnessed by two witnesses, all of whom act at the guardian's request.

10
11 Section 5(b) is new to the anatomical gift laws. It permits an anatomical gift to be made
12 by a statement or symbol in the donor's medical records without the necessity of the donor, or
13 other person making the gift, signing the record. The medical record becomes the document of
14 gift. See Section 2 (paragraph (4)). This section recognizes that this particular document of gift
15 needn't be signed by the donor or other person making the gift. Frequently, the decision to be an
16 organ donor is made as a result of conversations with the donor's physician or other health care
17 provider. Making the gift effective by an entry in the medical records facilitates the gift when the
18 decision is made under those circumstances. Because other laws exist to assure the integrity of
19 medical records, no reason exists to require a signature by the person making the gift. Of course,
20 a person signing a donor card could request a health care provider to include the card in the
21 donor's medical records in much the same way as individuals have health care powers inserted
22 into their medical records. Although this [act] would permit the making of an anatomical gift by
23 a statement or symbol in a donor's medical records, doctors are neither required nor even
24 encouraged to discuss organ donation with their patients. The decision to become an organ donor
25 is highly personal and not all encounters between physicians and patients give rise to an
26 appropriate occasion to consider organ donation. For example, while it could be appropriate for a
27 doctor to discuss organ donation with a patient in the context of a routine annual physical, it
28 might not be advisable to do so as a patient is being wheeled in for surgery. Additionally, donors
29 making gifts through their medical records should also be encouraged to also make the gift by
30 way of a driver's license or donor registry.

31
32 Section 5(a) applies to all persons making an anatomical gift under Section 4. On the
33 other hand, subsections (c), (d) and (e) apply only to donors. For donors there is, to some extent,
34 an overlap between the four sections as a record includes licenses, identification cards, donor
35 registries, and wills.

36
37 Typically an anatomical gift of a part for transplantation or therapy is not made by a will.
38 In fact, donors would be ill-advised to make a gift by will as the terms of the will may not be
39 known in sufficient time to allow a successful recovery of organs. Clients who make an
40 anatomical gift of their parts by a will should be strongly encouraged to make their wishes
41 known by other means as well. On the other hand, some people donate their bodies to medical
42 science for research or education and they may do so by a will. Subsection (d) provides that, if
43 an anatomical gift is made by will, the gift takes effect at the donor's death and is valid even
44 though the will is not probated or is declared invalid.

1 While subsection (e) does not expressly contemplate a will being signed for a donor by
2 another, most statutes of wills authorize a will to be signed on behalf of a testator under certain
3 conditions. See Uniform Probate Code § 2-502. Wills meeting those execution formalities can
4 also make an effective anatomical gift.
5

6 A decision was made in drafting this [act] not to include specific forms for the making of
7 an anatomical gift. Rather, the drafting committee concluded that suggested forms consistent
8 with this [act] be included in these comments. These forms follow:
9

10 ANATOMICAL GIFT DONOR CARD

11 Pursuant to the Anatomical Gift Act, upon my death, I hereby give (check all boxes
12 applicable):
13

- 14
- 15 1. Any needed parts (organs, tissues, or eyes);
16 (a) Transplant or therapy only
17 (b) Transplant, therapy, research, or education
 - 18 2. Only the following parts (organs, tissues, or eyes):
19 _____;
20 (a) Transplant or therapy only
21 (b) Transplant, therapy, research, or education
 - 22 3. My body for research and education;
 - 23 4. My body for the following purposes:
24 _____
25

26 _____
27 Date of Birth

26 _____
27 Signature of Donor or Other Person Making the Gift

28 INSTRUCTIONS

29
30
31 *Check box 1 if the gift of any organ, tissue or eyes is unrestricted and box 1(a) or 1(b)*
32 *depending upon whether the gift is for transplant or therapy only (a) or transplant, therapy,*
33 *research, or education (b).*
34

35 *Complete box 2 if the gift of a part is restricted. For example, if the gift is restricted to specific*
36 *organ(s), tissue(s), or part(s) only, e.g., heart, cornea, etc., check box 2 and write in the organ or*
37 *tissue to be given. Then check either box 2(a) or 2(b) depending upon whether the gift is for*
38 *transplant or therapy only (a) or transplant, therapy, research, or education (b).*
39

40 *If a gift is made only of the entire body for research and education check box 3.*
41

42 *Complete box 4 if there are more specific instructions regarding your anatomical gift.*
43

44 *While this form allows for the making of a gift of the body for research or education, it is often*
45 *advisable that the person making the anatomical gift and the intended donee have reached an*

1 *agreement concerning this gift before the gift is made. Typically, if a gift of the entire body is made*
2 *without specifically naming a donee, the donee will be that research or educational organization*
3 *selected by the organ procurement organization following your death. With respect to your organs,*
4 *tissue or eyes, the donee is the appropriate procurement organization that deals with organ, eye or*
5 *tissue donation*

6
7
8 ANATOMICAL GIFT STATE-ISSUED LICENSE OR CARD
9

10
11 _____
12 Print or Type Name of Donor
13

- 14 1. Any needed parts (organs, tissues, or eyes);
15 (a) Transplant and therapy only
16 (b) Transplant, therapy, research, or education
17 2. Only the following parts (organs, tissues, or eyes):
18 _____;
19 (a) Transplant and therapy only
20 (b) Transplant, therapy, research, or education
21 3. My body for research and education;
22 4. My body for the following purposes:
23 _____
24
25

26 A state might also provide for the making of an anatomical gift by a statement or symbol on a
27 license using a checkmark in a box labeled “organ donor.” In that case, because the check marked
28 statement reflects only a general intent to be an “organ donor,” only the donor’s parts would be the
29 subject of the anatomical gift. See Section 13(d).

1
2
3
4
5
6
7
8
9

ANATOMICAL GIFT OF PARTS-DONOR REGISTRY

Anatomical Gifts

Please select the items you wish to donate: *(click an item name for more detailed information about that item or items)*

| | |
|---|--|
| <input type="checkbox"/> All Organs, Eyes, and Tissues | <input type="checkbox"/> Hepatocytes (<i>Liver Cells</i>) |
| <input type="checkbox"/> Heart | <input type="checkbox"/> Eyes (whole globe) |
| <input type="checkbox"/> Liver/Iliac Vessels | <input type="checkbox"/> Corneas |
| <input type="checkbox"/> Small Intestine | <input type="checkbox"/> Bone and Soft Tissues (i.e. tendons, ligaments, fascia) |
| <input type="checkbox"/> Pancreas Islet Cells | <input type="checkbox"/> Bone/Tissue Upper Arm |
| <input type="checkbox"/> Lungs | <input type="checkbox"/> Bone/Tissue Lower Arm |
| <input type="checkbox"/> Pancreas/Spleen/Iliac Vessels | <input type="checkbox"/> Skin |
| <input type="checkbox"/> Carotid Arteries | <input type="checkbox"/> Saphenous Veins |
| <input type="checkbox"/> Kidneys | <input type="checkbox"/> Brain Tissue (research only) |
| <input type="checkbox"/> Heart for Valves, Conduits, Vessels, Pericardium | |

10
11
12
13

I offer the donation of the above checked organs/tissue/eyes for the following purposes:

| | |
|---|--|
| <input type="checkbox"/> Transplant Only | <input type="checkbox"/> Research Only |
| <input type="checkbox"/> Both Transplant and Research | |

14

1 ANATOMICAL GIFT OF BODY-DONOR REGISTRY

2
3 **Anatomical Gifts**

4
5 **Whole Body Donation**
6 **for Research and Education**

7
8
9 **Please place a checkmark in the box below for whole body donation**

10 Whole Body Donation

11
12 **I offer the donation of the above for the following purposes:**

13 Research Only Education Only
14 Both Research and Education

15
16 **SECTION 6. AMENDING OR REVOKING ANATOMICAL GIFT BEFORE**
17 **THE DECEDENT’S DEATH.**

18 (a) Subject to Section 8, a donor or other person authorized to make an
19 anatomical gift under Section 4 may amend or revoke an anatomical gift, whether or not made
20 by will, by:

21 (1) a record signed by:

22 (A) the donor;

23 (B) another person which made the anatomical gift on behalf of the

24 donor; or

25 (C) another individual acting at the direction of the donor or the

26 other person; or

27 (2) a later-dated document of gift that amends or revokes a previous

Comment: If have used the word person, not individual because I assume there are some states where an institution can be a "guardian" If only an individual can be a quardian this could read: "another individual who ..."

Comment: Sould this be "individual?"

1 anatomical gift or a portion of a gift, either expressly or by inconsistency.

2 (b) Subject to Section 8, a donor or other person authorized to make an
3 anatomical gift under Section 4 may revoke an anatomical gift by the destruction of the
4 document of gift with the intent to revoke the gift.

Comment: This is new

5 (c) A donor may also amend or revoke an anatomical gift that was not made by
6 will by any form of communication during a terminal illness or injury addressed to at least two
7 other individuals who are at least [18] years of age.

Comment: The prior act provided: "any form of communication during a terminal illness or injury addressed to a physician or surgeon". This section is more expansive. Is it too expansive? Should we require at least one of the witnesses to be disinterested? Note that subsection (a) permits revocation by an oral communication to a doctor if that revocation is recorded in the medical records.

8 (d) A donor who makes an anatomical gift by will may also amend or revoke the
9 gift in the manner provided for amendment or revocation of wills or the manner provided in
10 subsection (a).

11 **Comment**

12 Section 6, relating to the amendment and revocations of anatomical gifts, largely mirrors
13 the provisions in the prior acts. The section applies to the amendment or revocation of an
14 anatomical gift whether made by a donor or by another person on behalf of the individual whose
15 body or parts are the subject of the anatomical gift. Subsection (a)(2), borrowing from statutes
16 dealing with the revocation of wills, contemplates revocations or amendments made either
17 expressly or by inconsistency with the later document of gift in time controlling. For example,
18 suppose a donor executes a will bequeathing her entire body to Medical School A for research
19 and education. Later, the donor signs a document of gift donating a kidney for transplantation.
20 Since the latter document of gift is only inconsistent with the prior document of gift to the extent
21 of the donated kidney, the donor's kidney would, if medically suitable, pass to the appropriate
22 procurement organization (See Section 13) and the donor's remaining body would pass to
23 Medical School A.

24
25 An anatomical gift can be revoked by a record signed by the donor or the other person
26 who made the gift on the donor's behalf pursuant to Section 4. Additionally, it can be signed by
27 another individual acting at the direction of the donor or other person. For example, suppose a
28 minor's parent signs a document of gift donating the minor's organs. The donor may later
29 revoke that gift by a signed record. Under Section 6(a)(2), the donor may also amend or revoke
30 the gift by a later-dated document of gift that is inconsistent with the earlier document of gift
31 signed by the parent.

32
33 Suppose a donor signed a donor card to donate a kidney and later advised her physician
34 that she no longer wanted to be a kidney donor. In this case, an entry in the patient's medical

1 records would revoke the early gift because the medical record would be a record signed by the
2 physician at the donor's direction. Because the medical record does not purport to make an
3 anatomical gift, it cannot be a document of gift.
4

5 In light of the broad definition of a document of gift, use of any of the specific devices
6 described in Section 5 to make a gift for the purpose of amending or revoking a gift would be
7 sufficient under this section. For example, suppose a donor advised his physician that he wanted
8 to be a kidney donor and later advised his physician he wanted to be a heart donor and both of
9 these decisions are recorded in the donor's medical records. The donor would be both a kidney
10 and heart donor.
11

12 An anatomical gift made by a document of gift can also be revoked by destruction if the
13 destruction is done with the intent to revoke the gift. As a practical matter revocation by
14 destruction will not be possible for gifts made on a donor registry. A donor wishing to revoke
15 gifts made on a registry should revise the registry. If an anatomical gift was evidenced by a
16 written document which was destroyed inadvertently and cannot be found, there may be no
17 effective Section 4 anatomical gift because no one may know of the gift. Inadvertent destruction
18 of donor cards are common. For example, a card may be lost when the donor decides to clean out
19 a wallet or purse. Thus, donors are well advised to make their wishes known on documents of
20 gift with greater permanency, such as a licenses, registries, or medical records, in order to reduce
21 the risk of inadvertent destruction.
22

23 The ability to make or revoke an anatomical gift is subject to the limitations in Section 8
24 of this [act]. For example, if a donor makes an anatomical gift of a kidney, all other persons are
25 precluded from making a later gift of that kidney or revoking that gift. Therefore, the donor's
26 later-appointed guardian would not be empowered to amend or revoke that gift.
27

28 An anatomical gift may also be revoked or amended by a donor with a terminal illness or
29 injury by any form of communication that is addressed to at least two individuals over the age of
30 [18]. If the donor cannot communicate orally, acceptable communication, in addition to a record,
31 could include a movement of the head or eye in response to specific questions.
32

33 **SECTION 7. REFUSAL TO MAKE ANATOMICAL GIFT.**

34 (a) An individual may refuse to make an anatomical gift of the individual's body
35 or any part by:

36 (1) a record signed by the individual or by the individual's will whether
37 or not the will is admitted to probate or invalidated after the individual's death;

38 (2) a statement or symbol attached to or imprinted on a license to operate

1 a vehicle or an identification card issued by a state or on a donor registry if the license or registry
2 allows for the making of a refusal;

3 (3) a statement or symbol entered into the individual's medical record by
4 the individual's health-care provider at the individual's direction; or

5 (4) any form of communication made during the individual's terminal
6 illness or injury, addressed to two or more other individuals who are at least [18] years of age.

7 (b) An individual who has refused to make an anatomical gift may amend or
8 revoke the refusal in the manner provided in subsection (a) or by making an anatomical gift
9 pursuant to Section 5 that is inconsistent with the previous refusal to make that gift.

Comment: Should this be to a physician or at least one disinterested witness?

10 **Comment**

11 Section 7, relating to refusals to make an anatomical gift, finds its antecedents in prior
12 law. This section, however, applies only to a refusal by an individual of anatomical gifts of that
13 individual's body or of that individual's parts. An agent, parent, or guardian, cannot make a
14 refusal binding upon any other person. Section 7 honors the autonomy of the individual whose
15 body or part might otherwise be the subject of an anatomical gift to bar others from making a gift
16 on his or her behalf.

17
18 Refusals typically are evidenced by a signed record. They can also be evidenced by a
19 symbol or statement on a license or card issued by the state or upon a donor registry where there
20 is an opportunity to do so or upon a medical record. However, nothing in this [act] should be
21 construed to require licenses, identification cards, registries, or medical records to provide space
22 for refusals. Additionally, a refusal can be made by any form of communication by a terminally
23 ill or injured person in the same manner as amendments and revocations. A refusal can only be
24 amended or revoked by the individual making the refusal. The consequence of a refusal is set
25 forth in Section 8.

26
27 Subsection (b) provides for the revocation of a refusal. A refusal may be revoked by a
28 signed record. For example, suppose an individual signs a refusal to be an organ donor under
29 Section 7. Later that individual signs a record stating only "I revoke the refusal." At this point
30 that individual is neither a donor nor a refuser and upon the individual's death, an anatomical gift
31 could be made by the person or persons listed in Section 9. On the other hand, suppose the
32 individual who had signed a refusal later executed a document of gift donating "my kidney
33 only." Here there is a gift of the kidney and a refusal to be a donor of any other part. This would
34 preclude any person from revoking the gift of the kidney or making a gift of any other part.
35 Similarly, if the individual had signed a refusal and then later obtained a driver's license stating

1 that the individual wanted to be an “organ donor.” The driver’s license would revoke the refusal
2 to the extent inconsistent with the refusal.

3
4 A simple form of refusal under this [act] could provide:

5
6 Pursuant to the Anatomical Gift Act, I hereby refuse to make any anatomical gift.

7
8
9 _____
10 Date of Birth

_____ Signature of Declarant

11
12 **SECTION 8. EFFECT OF GIFT, AMENDMENT, REVOCATION OR**

13 **REFUSAL.**

14 (a) In the absence of contrary indications by the donor, no person, other than a
15 donor, may make, amend, or revoke an anatomical gift of the donor's body or part if the donor
16 made an anatomical gift or an amendment of an anatomical gift of the donor's body or that part
17 under Section 4 or Section 6.

18 (b) A donor’s revocation of an anatomical gift of the donor’s body or any part
19 under Section 6 does not preclude any other person from making an anatomical gift of the body
20 or any part under Section 4 or Section 9 of this [act].

21 (c) If an individual refuses to make an anatomical gift of the individual’s body or
22 a part under Section 7, no other person may make an anatomical gift of the body or that part in
23 the absence of contrary indications by that individual.

24 (d) If a person other than the donor makes an anatomical gift or an amendment
25 of an anatomical gift of all or any part of the donor’s body under Section 4 or Section 6 no other
26 person may make, amend, or revoke the anatomical gift of the body or that part at a later time
27 under Section 9.

28 (e) A revocation of an anatomical gift of all or any part of the donor’s body under

Comment: This had been inadvertently included in the prior draft and its bad consequences highlighted by Commissioner’s Pepe’s floor comments.

Comment: Is "bar" a better word?

1 Section 6 by a person other than the donor does not preclude any other person from making an
2 anatomical gift of the body or any part under Section 4 or Section 8.

3 (f) In the absence of contrary indications by the donor or other person authorized
4 to make an anatomical gift under Section 4: an anatomical gift of a part is neither a refusal to
5 give other parts nor a limitation on the making of an anatomical gift of other parts under Section

6 9.

Comment: (2) is redundant of 7(b) and 7(e).

7 **Comment**

8 Section 2(h) of the '87 act provided that "an anatomical gift that is not revoked by the
9 donor before death is irrevocable and does not require the consent or concurrence of any person
10 after the donor's death." The intent of that section was to assure donation finality for anatomical
11 gifts made by donors prior to death. For many years it was the practice, albeit now changing, for
12 procurement organizations to seek permission from donor families to allow parts to be retrieved
13 from decedents who were donors. This practice, however, is inconsistent both with the '87 act
14 and, more importantly, the respect due to donors who have made anatomical gifts during their
15 lives. Furthermore, that practice could result in unnecessary delays in the harvesting of organs.

16
17 Section 8 is designed to bolster the rule that a donor's autonomous decisions regarding
18 the making or refusing to make an anatomical gift are honored and not subject to change by
19 others. Section 8 continues the policy of making lifetime donations irrevocable while also taking
20 away from families the ability to consent to, amend, or revoke donations made by donors during
21 their lifetimes. It also prevents families from making donations on behalf of decedents who,
22 while living, had signed a refusal to make an anatomical gift under Section 6 unless there is
23 evidence that the individual signing the refusal did not intend to have that refusal bind others
24 after death.

25
26 Section 8(a) provides that if a donor has made an anatomical gift or has amended an
27 anatomical gift, no other person can make, amend, or revoke that gift. For example, suppose a
28 donor gifts the donor's organs for transplantation by an appropriate document of gift. By virtue
29 of Section 8(a), no other person, whether purporting to act under Section 4 or Section 9, can alter
30 or revoke that gift. In fact, because they are by this [act] precluded from doing so, they have no
31 legal authority or right to alter or revoke the gift.

32
33 Section 8(b) provides that the donor's revocation of an anatomical gift, as distinguished
34 from a refusal, precludes no one from making an anatomical gift of the donor's body or parts.
35 The difference between the sections is that a revocation is an ambiguous act respecting the
36 donor's intention to bind others. A donor might want to bind others but it is just as likely that a
37 donor was ambivalent and was more than willing to leave the decision to donate to others. For
38 example, suppose a donor, who had donated a kidney by a donor card, later destroys that card

1 with the intent to revoke the gift. This revocation will not prevent another acting under either
2 Section 4 or 9 from making an anatomical gift. A donor who wishes both to revoke and bind
3 others must sign a refusal.
4

5 Section 8(c) provides that an individual's refusal to make an anatomical gift of the
6 individual's body or a part precludes all others from later making a gift of the body or that part
7 absent contrary indications by that individual. Thus, if an individual signs a Section 7 refusal, no
8 person following that individual's death has the power to make an anatomical gift for that
9 individual. Of course, such persons are precluded only if they know of the refusal. See Section
10 9(b). This section also honors the autonomy of the individual to refuse to have his body or parts
11 the subject of an anatomical gift. While this [act], as well as the prior acts, reflects the policy of
12 encouraging anatomical gifts, it also is important to respect the autonomous decisions of
13 individuals not to be organ donors.
14

15 An individual might sign a Section 7 refusal that is not intended to affect the ability of
16 others to make an anatomical gift following the individual's death. If that intent is reflected in
17 the refusal, or under Section 7(b) if the refusal is later revoked, then other persons can make an
18 anatomical gift under Section 9. For example, suppose an individual signs a Section 7 refusal
19 barring the making of an anatomical gift of the individual's body and parts. If that person does
20 not revoke the refusal, then neither that individual's agent or guardian nor any person listed in
21 Section 9 can make an anatomical gift of the individual's body or part. However, it is possible
22 that an individual might wish to bar the individual's guardian from making an anatomical gift
23 under Section 4 but not the individual's family from making a gift under Section 9. If that intent
24 is made clear in the refusal, that intent will be honored.
25

26 A revocation is not a refusal, however, Therefore a donor's revocation of a previously
27 made anatomical gift of a part does not preclude an agent or guardian acting under Section 4 or
28 any person listed in Section 9 from making a later gift of the donor's body or part. The only way
29 a donor can bar another from making a gift is by the execution of a Section 7 refusal. This policy
30 is consistent with prior law. Therefore, donors wishing to bar others from making an anatomical
31 gift must sign a refusal.
32

33 Sections 8(d) and (e) apply to gifts, amendments and revocations by persons other than
34 a donor under either Section 4 or 6 of this [act]. These persons cannot make a Section 7 refusal.
35 Generally, the rules here parallel the rules applicable to donors in Section 8 (a) and (b). For
36 example, suppose the guardian of an individual makes a donation of that individual's kidney by
37 signing a document of gift. Later the individual dies. The only individual who could revoke that
38 gift would be the person acting as the individual's guardian at the individual's death since all of
39 the other persons listed in Section 9 would be precluded from revoking the gift. The guardian's
40 decision would not affect the ability of the donor, the donor's agent, or the donor's guardian
41 from later making, amending, or revoking a gift or the individual whose body or part was
42 donated from later signing a Section 6 refusal. However, the revocation of an anatomical gift by
43 an agent, parent or guardian would not prevent the making of an anatomical gift under Section 9.
44 For example, suppose a minor makes an anatomical gift by a notation on a driver's license which
45 the parent revokes prior to the minor attaining age 18. The minor takes no further action to

1 effectuate the gift and dies at age 19 survived by a spouse. The spouse could make an anatomical
2 gift because the parent's revocation of the minor's anatomical gift does not prevent the spouse
3 from making the gift.
4

5 Section 8(f) consistent with prior law provides that absent contrary indications by the
6 person making an anatomical gift, the gift of a part is neither a refusal to give other parts nor a
7 limitation on the making of gifts of other parts. Thus, donor makes a gift of the donor's kidney.
8 This gift is not construed as a refusal to the donor's family later making a gift of the donor's
9 heart.
10

11 **SECTION 9. WHO MAY MAKE AN ANATOMICAL GIFT AFTER THE**
12 **DECEDENT'S DEATH.**

13 (a) Subject to subsection (b) and Section 10(b), an anatomical gift of all or any
14 part of a decedent's body for purposes of transplantation, therapy, research, or education may be
15 made, in the order of priority listed, by any member of the following classes of persons who is
16 reasonably available::

17 (1) the individual who was acting as the agent of the decedent at the time
18 of death and who could have made an anatomical gift under section 4(b) of this [act]
19 immediately before the decedent's death;

20 (2) the spouse of the decedent;

21 (3) adult children of the decedent;

22 (4) parents of the decedent;

23 (5) adult siblings of the decedent;

24 (6) adult grandchildren of the decedent;

25 (7) grandparents of the decedent;

26 (8) the persons who were acting as the [guardian] of the person of the
27 decedent at the time of death;

Comment: I assume children are defined by other law. Someone asks about step-children. Should they be added to the list?

Comment: If guardians limited to individuals, this could read, individuals who were

1 (9) an adult who exhibited special care and concern for the decedent and
2 was familiar with the decedent's personal values, and

3 (10) any other person having the authority to dispose of the decedent's
4 body.

5 (b) If there is more than one member of a class listed in paragraphs (1), (3), (4),
6 (5), (6), (7), (8), or (10), an anatomical gift may be made by a majority of the members of the
7 class who are reasonably available.

8 **Comment**

9 Section 9 allows for the making of anatomical gifts following an individual's death by
10 the persons listed in Section 9 who are not otherwise precluded from doing so under either
11 Section 8 or Section 10. The list of persons who can make an anatomical gift on behalf of a
12 decedent is slightly expanded from prior law. This list now includes that individual who at the
13 time of the decedent's death was acting as an agent of the decedent, adult grandchildren of the
14 decedent, and a close friend of the decedent.

15
16 This act does not extend the agency relationship beyond a principal's death. Under
17 other law, an agent's power under a health-care power or any power terminates when the
18 principal dies. This [act], however, gives the person who had been acting as an agent at the time
19 of the principal's death (even though death terminated the agency relationship) a personal right
20 to have the first priority to make an anatomical gift on behalf of the decedent so long as that
21 person was empowered immediately before the decedent's death to have made an anatomical gift
22 under Section 4. Thus, if the agent acting under a health care power did not have the authority to
23 make an anatomical gift by express language in the health care power of attorney, that individual
24 would not have a priority to do so under Section 9.

25
26 Absent a donation by the decedent or the decedent's former agent, other persons or
27 classes of person are empowered to make an anatomical gift in the following order: spouse of the
28 decedent; adult children of the decedent; parents of the decedent, adult siblings of the decedent;
29 adult grandchildren of the decedent; grandparents of the decedent; and the person who was
30 acting as guardian of the decedent at the time of the decedent's death. In the absence of those
31 persons a decision can be made by any other adult exhibiting "special care and concern for the
32 decedent who was familiar with the decedent's personal values." This concept parallels language
33 in Section 5(c) of the Uniform Health-Care Decisions Act. Lastly, "any other person having the
34 authority to dispose of the decedent's body can make the decision if no other persons are
35 reasonably available.

36
37 This [act], in common with the prior acts, does not require, except in the case of a

Comment: Under this language a coroner could make a gift of the body organs of a person with no family. Is that the right result? Will the coroner's object?

1 “close friend,” that the person making the anatomical gift be familiar with the decedent’s
2 personal values. The difference assumes that the other persons empowered to make an
3 anatomical gift would, by virtue of their relationship to the decedent, be aware of decedent’s
4 values and to expressly require it might result in unnecessary disputes. To the extent that an
5 individual is concerned that the persons named in Section 9 may not take adequate account of
6 their personal preferences regarding anatomical gifts, the onus is on them to either make or
7 preclude the making of an anatomical gift.

8
9 A commonly raised concern regarding whether an anatomical gift might be
10 inconsistent with a decedent’s personal beliefs centers around religion. In *Organ and Tissue*
11 *Donation: A Reference Guide for Clergy, 4th ed., 2000. Cooper ML, Taylor GJ, eds* and
12 reprinted at <http://www.organtransplants.org/understanding/religion> an analysis was done of the
13 positions and statements of various religions regarding organ donation. While not exhaustive of
14 all religious traditions (it included only the following: African Methodist Episcopal, Amish,
15 Assembly of God, Baptist, Brethren, Buddhism, Catholicism, Disciples of Christ, Christian
16 Science, Episcopal, Greek Orthodox, Hinduism, Independent Conservative Evangelical, Islam,
17 Jehovah’s Witnesses, Judaism, Lutheran, Mennonite, Moravian, Church of Jesus Christ of
18 Latter-Day Saints, Pentecostal, Presbyterian, Seventh-Day Adventists, and Shinto, Society of
19 Friends, Unitarian Universalist, United Church of Christ and United Methodist), the authors
20 found no religious objection to organ donation. It did find in many traditions enthusiastic
21 support; in many others the view that the decision is solely for the individual or family. Notably,
22 Pope John Paul II has stated: “The Catholic Church would promote the fact that there is a need
23 for organ donors and that Christians should accept this as a ‘challenge to their generosity and
24 fraternal love’ so long as ethical principles are followed.” *Id.* For individuals with a religious
25 objection to donation, the opportunity to refuse a donation and preclude any other person from
26 donating their organs is an important safeguard in this [act].

Comment: Commissioner Ossen raised an issue regarding religious objections. There was extended discussion. Should we be doing more?

27
28 Because of subsection (b) and unlike the ’87 act, if a class empowered to make a gift has
29 multiple members and a majority of the members of the class who are reasonably available make
30 the gift, the gift is valid notwithstanding the objection of one or more members of the class. This
31 rule, however, is inapplicable to the “close friend” category. While the decedent may have had
32 more than one “close friend” under this [act] any of them is empowered to make an anatomical
33 gift.

34
35 The concept and definition of “reasonably available” is new in this [act]. It is drawn from
36 lessons learned in the drafting of the Uniform Health-Care Decisions Act and borrows from the
37 language in Section 1(14) of that act. The making of an anatomical gift following a decedent’s
38 death is extremely time sensitive, and a decision to donate must be made within a relatively short
39 period of time following death if the organs are to remain viable and human lives are to be saved.
40 In practice, where an anatomical gift of a decedent’s organs was not made prior to death,
41 conversations with family members to consider donation often occur before death but that is not
42 always possible. In accident cases, for example, it can take time to locate all family members.
43 Where a decision to donate on behalf of a dying person can be made in advance, the procurement
44 organizations generally will have no difficulty in contacting persons with the priority to make an
45 anatomical gift. However, in other cases locating persons with a higher priority may not be as

1 easy or even possible (although this should be less so in this highly electronic age). For example,
2 a person may be dying as the result of an automobile accident. The procurement organization
3 may have easily contacted the dying person's adult siblings but their parents are on a cruise. This
4 [act] would allow the siblings to act assuming the parents could not be contacted to consider
5 whether to make or refuse to make a donation.
6

7 **SECTION 10. MANNER OF MAKING OR REVOKING ANATOMICAL GIFT**
8 **AFTER DECEDENT'S DEATH.**

9 (a) An anatomical gift under Section 9 may be made only by a document of gift
10 signed by the person making the gift or that person's recorded telephonic or other recorded
11 message or by another form of oral communication that is contemporaneously reduced to a
12 record and signed by the donee.

Comment: Can we come up with better language here?

13 (b) A person or class of persons listed in Section 9 may not make an anatomical
14 gift if:

15 (1) the person or class of persons knows that the right to make an
16 anatomical gift was precluded by Section 8;

Comment: Would "barred" be a better word?

17 (2) the person or class of persons knows of any objection to the making of
18 an anatomical gift by any member of a prior class who is not reasonably available, or, if there is
19 more than one member of the prior class who is not reasonably available, the person knows of an
20 objection by a majority of them or knows that they are equally divided whether to make an
21 anatomical gift; or,

22 (3) a person in a prior class is reasonably available at the time of the
23 decedent's death to make an anatomical gift but has not been given a reasonable opportunity to
24 make or to object to the making of an anatomical gift.

Comment: While I don't like this language I wanted to not use the word "refuse" so as to limit the use of the word "refuse" to acts by a donor. Help?

25 (c) Subject to subsection (d), an anatomical gift by a person authorized under

1 Section 9 of this [act] may be revoked orally or in a record by any member of a prior class who is
2 reasonably available. If there is more than one member of the prior class who is reasonably
3 available, the gift is revoked only if a majority of them object to the making of the anatomical
4 gift or they are equally divided whether to make an anatomical gift.

5 (d) A revocation under subsection (c) is effective only if, the donee or the
6 physician, technician, or enucleator removing the part or preparing the recipient actually knows
7 of the revocation before procedures have begun to remove a part from the decedent's body or to
8 surgically prepare the recipient.

9 (e) For purposes of this section, if a person having priority to make, to object to
10 the making of, or to revoke an anatomical gift is unwilling to make a decision in a reasonably
11 timely manner, the person is deemed not to be reasonably available.

12 Comment

13 Section 10(a) provides that an anatomical gift under Section 9 must be made by a
14 document of gift that is signed by the person making the gift. The person may also make the gift
15 orally but evidence of that oral gift must be reduced to a record signed by the donee determined
16 under Section 13. For example, the decedent's spouse might consent to a gift over the telephone.
17 The organ procurement organization, as donee, would then note that consent in a record and sign
18 that record.

19
20 No person may make an anatomical gift if the person knows that the right to make an
21 anatomical gift was precluded under Section 8. For purposes of this [act] "knows" is defined to
22 mean actual knowledge. See Section 2(paragraph 12). This places an onus on individuals
23 wishing to preclude an anatomical gift of their parts following their deaths to do so by a record
24 that is easily discoverable or to communicate to their loved ones their wishes. These individuals,
25 for example, might want to have their refusal (or their donations) included in their medical
26 records.

27
28 No person may make an anatomical gift if the person knows of any objection to the
29 making of an anatomical gift by any member of a prior class who is not reasonably available.
30 See Section 10(b)(2). For example, if the decedent's spouse is not reasonably available, a child
31 of the decedent cannot make an anatomical gift if the child knows that the decedent's spouse
32 objects to the making of an anatomical gift. But, if there are multiple members of a class who are
33 not reasonably available, a person in a more remote class can make an anatomical gift unless the

Comment: Should a revocation under this section be evidenced by a signed record?

Comment: Commissioner Pepe raised concerns here. He worries that an unwillingness to make a decision is really an objection. See transcript for Ring and Katz response. Are we satisfied? He also suggested that if a person is unwilling to make a decision that they must be advised that that unwillingness will allow someone lower down on the list to make the decision. He also suggested that the act require Section 8 decision makers to honor a "known religious objection."

1 person knows either that a majority of the prior class object to the making of the gift or that the
2 unavailable members of the group are equally divided. This majority/equally divided rule means
3 that a known objection by only one member of a class of more than two persons does not bar a
4 person in a more remote class from making an anatomical gift. For example, suppose decedent's
5 relatives include six adult siblings who are not reasonably available and an adult grandchild. The
6 grandchild, although in a more remote class, can make the anatomical gift so long as the
7 grandchild has no knowledge that four adult siblings object or that the siblings are equally
8 divided. (Under prior law a person was barred from making an anatomical gift if the person
9 knew of an objection by any member of the person's class or prior class. Section 3(b)(3)).
10 Suppose it turns out that one of the siblings becomes reasonably available before procedures had
11 begun to either remove the part from the donor or to surgically prepare the recipient. See
12 subsection (d). That sibling could revoke the grandchild's gift under subsection (c).

13
14 Of course, if the siblings, or any one of them, were reasonably available to make a
15 decision initially but had not been given the opportunity to do so, then the grandchild would not
16 be empowered to make the gift under Section 9. See Section 10(b)(3). On the other hand, if the
17 siblings were reasonably available but unwilling to make a decision in a reasonably timely
18 manner, Section 10(e) treats them as unavailable.

19
20 In common with the prior law, if a member of a class, or the majority of the members of a
21 class, make an anatomical gift but there is a member of a prior class who is reasonably available,
22 that member may revoke the gift. Section 10(c). However, unlike prior law, subsection (c)
23 provides that if the prior class has more than one member who is reasonably available, then the
24 gift can be revoked only if the majority of the members of the prior class revoke the gift or they
25 are equally divided. For example, suppose an anatomical gift of a kidney is made by a parent of
26 the decedent. Prior to either the removal of the kidney from the decedent or the surgical
27 preparation of the recipient, a child of the decedent who was not initially present to make or
28 refuse to make a gift purports to revoke the gift. If this child is decedent's only reasonably
29 available child, the gift is revoked. But, if there are three children who are reasonably available,
30 the gift is not revoked unless two of them agree to revoke the gift.

31
32 This act, unlike prior law, defines "reasonably available." (Section 2 (paragraph 18)).
33 Section 10(e) also provides that, if a person with a priority to make, to object to the making of, or
34 to revoke a gift, is "unwilling" to make a decision, that person is deemed *not* to be reasonably
35 available. For example, an individual with a higher priority (spouse) may be unwilling to make a
36 decision preferring it be made by others (children). In this case the spouse, being unwilling to
37 make a decision, is not reasonably available. There is some concern that an unwillingness to
38 make a decision is the equivalent of an objection, or that in treating it as an objection, there is the
39 potential for inappropriate pressure being placed on a grieving relative to make a decision. This
40 concern relates to a potential tension between the goal of anatomical acts to increase the supply
41 of transplantable organs and the general societal goal of respecting individual autonomy. This
42 [act] reflects a judgment that in the context of organ donation, the potential savings in human life
43 justifies the position that the inability to express a decision is tantamount to not being available
44 to make a decision. This policy choice was supported by the fact that procurement organizations
45 are well-trained to work with family members when seeking an anatomical gift to distinguish

1 between an objection and a true unwillingness to make a decision.
2

3 **SECTION 11. COOPERATION BETWEEN [CORONER][MEDICAL**
4 **EXAMINER] AND PROCUREMENT ORGANIZATIONS AND DONEES.**

5 (a) A [coroner] [medical examiner] and a procurement organization shall
6 collaborate to maximize the opportunity to recover anatomical gifts for the purposes of
7 transplantation, therapy, research, and education.

8 (b) Upon request of a procurement organization, a [coroner] [medical examiner]
9 shall release the name, contact information, available medical and social history, and autopsy
10 results relating to the death of a deceased individual in the [coroner's] [medical examiner's]
11 jurisdiction if the release will not interfere with an [examination or investigation][autopsy].

12 (c) If a [coroner] [medical examiner] receives notice from a procurement
13 organization that an anatomical gift might be available with respect to a deceased individual
14 whose body is in the jurisdiction of the [coroner][medical examiner] or receives notice from a
15 donee of an anatomical gift of any part from a decedent in the jurisdiction of the
16 [coroner][medical examiner], the [coroner][medical examiner] shall conduct an examination,
17 autopsy, or analysis of those parts in a manner and within a time period compatible with their
18 preservation for the purposes of the anatomical gift.

19 (d) If the body of a deceased individual is in the jurisdiction of the
20 [coroner][medical examiner], the [coroner][medical examiner] may review all, medical records,
21 laboratory test results, x-rays, other diagnostic results, and other information in the possession of
22 any person about the deceased individual which the [coroner] [medical examiner] determines
23 may be relevant to an examination, autopsy, or analysis of the body and parts of a body within

Comment: Style would have me use "decedent" but cannot do that here as decedent is a defined term that won't necessarily work here.

Comment: Eye bank has raised question about charges.

Comment: Is this responsive to Commissioner LeBrun's comments? He is concerned that a coroner could get to the medical records of a relative if relevant . . .

1 the jurisdiction of the [coroner] [medical examiner] .

2 (e) A person that has any information requested by a [coroner] [medical
3 examiner] pursuant to subsection (d) shall provide that information as expeditiously as possible
4 to allow the [coroner] [medical examiner] to conduct the investigation into the cause of death
5 and to complete the examination, autopsy, or analysis of the body and parts within a time period
6 compatible with the preservation of parts for purposes of transplantation, therapy, research, or
7 education.

8 (f) If an anatomical gift has been made of an organ from a decedent whose body
9 is within the jurisdiction of a [coroner] [medical examiner] and an autopsy is not required, or the
10 [coroner] [medical examiner] determines that an autopsy is required but that the recovery of the
11 organ will not interfere with the autopsy, the [coroner] [medical examiner] and organ
12 procurement organization shall collaborate in the timely removal of the organ from a decedent
13 for purposes of transplantation or therapy.

14 (g) If an anatomical gift of an organ from a deceased individual whose body is
15 within the jurisdiction of a [coroner] [medical examiner] has been or might be made but the
16 [coroner] [medical examiner] initially believes that the recovery of the organ by the organ
17 procurement organization could interfere with the investigation into that individual's cause of
18 death, the [coroner] [medical examiner] or its designee shall attend the removal procedure for
19 that organ before making a final determination not to allow the organ procurement organization
20 to recover the organ for transplantation, therapy, research, or education. At the removal
21 procedure, the [coroner] [medical examiner] may allow recovery by the organ procurement
22 organization to proceed, request a biopsy, or deny recovery by the organ procurement
23 organization if, in the judgment of the [coroner] [medical examiner], the organ may be involved

1 in determining the individual's cause of death. The [coroner] [medical examiner] shall explain in
2 a record the reasons for not allowing the organ procurement organization to recover the organ
3 and include those reasons in the records of the [coroner] [medical examiner] and provide a copy
4 of the reasons to the organ procurement organization.

5 (h) If a [coroner] [medical examiner] is required to be present at an autopsy under
6 subsection (g), the organ procurement organization requesting the recovery of the organ shall
7 reimburse the [coroner] [medical examiner], upon request, for the direct costs incurred in
8 complying with subdivision (g).

9 (i) If an anatomical gift of eyes or tissue has been made, a [coroner] [medical
10 examiner] shall permit the timely removal of eyes and tissue from a decedent for purposes of
11 transplantation or therapy by a procurement organization.

12 (j) This section does not authorize any person to make an anatomical gift. No
13 parts may be removed from the body of a deceased individual in the jurisdiction of a [coroner]
14 [medical examiner] for transplantation, therapy, research, or education unless that part or body is
15 the subject of an anatomical gift. The body of a deceased individual within the jurisdiction of the
16 [coroner] [medical examiner] may not be delivered to a donee of the body for research or
17 education unless the body is the subject of an anatomical gift.

18 **Comment**

19 Under subsection (a) collaboration should include the development and implementation
20 of a death notification protocol to procurement organizations.
21

22 **SECTION 12. SEARCH AND NOTIFICATION.**

23 (a) The following persons shall make a reasonable search of an individual's
24 personal effects available on or near the individual for a document of gift or other information

Comment: This was the subject of some discussion from Commissioner Hiliard. He thought "reasonable costs." I think "direct" is more precise. A issue is the relationship between this and Medicare reimbursement. We will need some education from our [3]

Comment: Do we need to make this provision subject to the same qualifications as in subsection (g)? See letter from Eye Bank Ass'n of 6/15/05

Comment: See concern expressed by Commissioner Klemin with response by Commissioners Nixon and McKay. Have we more to do here? Should we return to prior language so that if a person is found in [4]

Comment: Responding to concerns of many commissioners. Is retaining this likely to raise too much of a fuss and does suggested new (b) below a better solution. But, this has been the law [5]

1 identifying that individual as an individual who has made or refused to make an anatomical gift
2 or on whose behalf an anatomical gift has been made:

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

5 (2) a hospital, upon the admission of that individual at or near the time of
6 death, if no other source of the information is immediately available

7 (b) If a law enforcement officer or any other person with access to motor vehicle
8 records finds an individual who the law enforcement officer or other person reasonably believes
9 is dead or near death, the law enforcement officer or other person shall make a reasonable search
10 of the motor vehicle records to ascertain whether the individual has made or refused to make an
11 anatomical gift.

12 (c) A organ procurement organization, upon admission of an individual at or near
13 the time of death, shall make a reasonable search of any donor registry serving the geographical
14 area in which the hospital is located to ascertain whether the individual has made or refused to
15 make an anatomical gift.

16 (d) If a document of gift or a record evidencing a refusal to make an anatomical
17 gift is located by the search required by subsection (a) or (b), and the individual or deceased
18 individual to whom it is related is taken to a hospital, the document of gift or record must be sent
19 to the hospital by the person who located the document of gift or record.

20 (e) A person that fails to discharge the duties imposed by this section is not
21 subject to criminal or civil liability but is [may be] subject to administrative sanctions as
22 otherwise provided by law.

Comment: Should we impose a specific duty on coroner's to check registries and motor vehicle records as well?

Comment: In light of the hospital's duty to make a referral, is this section necessary?

Comment: Commissioner Kings asks whether this is appropriate in this act. Perhaps, he suggests it should just be in a comment.

23 **Comment**

1 The '87 Act did not limit a reasonable search to the individual's personal effects. Rather
2 it appeared to authorize broader searches to discover a document of gift. While there are no
3 known cases suggesting an overzealousness of searches under the authority of the prior law, the
4 language was deemed possibly too intrusive and susceptible to an interpretation allowing for
5 broader searches than was intended. The intent here is to limit reasonable searches to personal
6 effects. This limitation recognizes that the prototypical evidence of a donation by a donor during
7 life is the donor's driver's license. Admittedly, emergency rescuers may also find dying or
8 deceased individuals in their homes where they are unlikely to have a driver's license on their
9 persons. While subsection (a) does not authorize a reasonable search of their homes, subsection
10 (b) requires any responder with access to the motor vehicle records to search those records for
11 evidence of an anatomical gift.
12

13 SECTION 13. PERSONS WHO MAY BECOME DONEES.

14 (a) In this section, "appropriate procurement organization" means:

15 (1) in the case of a donation of an organ, the organ procurement
16 organization for the service area in which the decedent died; and

17 (2) in the case of a donation of eye or tissue, a procurement organization
18 for the part to be used for transplantation or therapy.

19 (b) The following persons may be donees of anatomical gifts:

20 (1) an appropriate procurement organization;

21 (2) a hospital, accredited medical or dental school, college, or university
22 for education, or research or any other person participating in education or research involving the
23 use of human bodies or parts; or

24 (3) a named individual designated by the person making the anatomical
25 gift if the anatomical gift is of a part for transplantation or therapy needed by the named
26 individual;

27 (c) If an anatomical gift is made under Section 4 of one or more parts in a
28 document of gift that does not designate a donee, the donee is the appropriate procurement

Comment: Since OPO is defined in section 2 as one designated by HHS, wouldn't such an organization have to abide by federal allocation policies/? If not, what if we added to end of (1) "acting in accordance with federal organ allocation policies."

Comment: Commissioner Kneeder asks, suppose a sign a donor card specifically naming the organ procurement organization in Virginia as the donee but he died in Pittsburg. Does the organ go to the OPO serving Pittsburg or the one serving Virginia? SFK thinks it goes to the Pittsburg one as the provisions in (3) below do not apply. Is this consistent with policy?

Comment: Does this sufficiently respond to Commissioner Ramasastry's concern about registries for the trading of organs?

1 organization for each part.

2 (d) If a document of gift made pursuant to Section 4 specifies only a general
3 intent to make an anatomical gift by phrases such as “organ donor” or “body donor,” the
4 decedent’s parts may be used only for transplantation or therapy. For this purpose the donee is
5 the appropriate procurement organization for each part.

6 (e) If there is no donee or of decedent’s parts not used by the donee for
7 transplantation, therapy, research, or education custody of the decedent’s body vests in the
8 person under obligation to dispose of the body.

9 (f) If a donee knows that there was a refusal to make an anatomical gift under
10 Section 7 that there was a revocation of an anatomical gift or that an anatomical gift was not
11 effectively made under Section 9, the donee may not accept the anatomical gift. For purposes of
12 this subsection, if the donee knows that:

13 (1) a document of gift is on a particular donor registry, the donee is
14 deemed to know of any amendment or revocation of that document of gift or any refusal to make
15 an anatomical gift that is on the same donor registry; or,

16 (2) a decision to make an anatomical gift was evidenced by the donor’s
17 medical records maintained by a particular health-care provider, the donee is deemed to know of
18 any amendment or revocation of that gift or any refusal to make an anatomical gift that is on the
19 donor’s medical records of that particular health care provider.

20 (g) This [act] does not affect the allocation of parts by any person acting under
21 the authority of federal law relating to the allocation of parts for transplantation.

22 **Comment**

23 Who may be a donee of organs, eyes, and tissue, differs under this [act] because of

Comment: Suppose an organ is sent from Iowa to California where it is then rejected. Whose law determines who has “obligation to dispose of the body?”

Comment: Style has a recommended change here that I do not understand.

1 differing federal policies and regulations. For eyes and tissue, the appropriate procurement
2 organization is a procurement organization for the eye or tissue. Eye and tissue banks do not
3 have a defined service area. Furthermore, eyes and tissue need not be transplanted in a short
4 period of time following their retrieval from a donor. They can be stored for future use.

5
6 On the other hand, organs, once retrieved from a donor, generally must be used within a
7 relatively short period of time. Furthermore, there is a level of medical suitability between a
8 donor and a recipient regarding a transplantable organ that does not exist for eyes and tissue.
9 Since the promulgation of the prior anatomical gift acts there have been significant changes in
10 how organs, in particular, are procured and allocated for purposes of transplantation. The
11 changes in this [act] take into account the differences between organs, eyes, and tissue.

12
13 By Section 274 of the National Organ Transplant Act in 1984, Congress created the
14 Organ Procurement and Transplant Network. See also, 42 CFR §§ 121 *et. seq.* That Network, in
15 turn, contracts with United Network Organ Sharing (UNOS), a non-profit corporation, to
16 administer the nation-wide allocation of organs for transplantation. UNOS, in turn, has
17 agreements with numerous organ procurement organizations with specified service areas. The
18 OPOs have primary responsibility to evaluate the medical suitability of organs for
19 transplantation, secure gifts under Section 9 where the decedent was not a donor at the time of
20 death, arrange for the procurement of organs from donors, and cause organs to be allocated and
21 transferred to recipients in accordance with federal regulations and policies adopted by UNOS
22 pursuant to federal regulation. Generally, the OPO which oversees the procurement and transfer
23 of organs is the organ procurement organization for the service area in which the donor dies.

24
25 To assist in the evaluation of potential donors Federal law also requires hospitals
26 receiving Medicare funding to refer all deaths or near deaths to organ procurement organizations
27 for the evaluation of the decedents as possible organ donors. See 42 CFR § 482.45 (Conditions
28 of Participation: Organ, tissue, and eye procurement). These referral requirements have made the
29 provisions of Section 5 of the 1987 Anatomical Gift Act obsolete and, accordingly, those
30 provisions have been deleted from this [act].

31
32 While this [act] permits donations to a named individual, such donations are exceedingly
33 rare for at least two reasons. First, only in rare circumstances would a donor, during the donor's
34 life, know of an individual who would need an organ that would be the subject of an anatomical
35 gift and similarly decedent's families are generally not likely to know of the identity of such
36 individuals. Secondly, as a result of the national allocation policies, anatomical gifts to named
37 individuals are very rare because the donee, in such case, may not have a priority to the organ on
38 the national list. If the donee lacks a priority, no hospital receiving Medicare funding (about ___%
39 of all hospitals in the United States) would be permitted to allow its facilities to be used for the
40 transplant procedure.

41
42 An anatomical gift of a body for research or education can be made to a designated
43 organization. These typically occur as the result of a body donation to a particular institution in
44 the donor's will or as the result of a prior arrangement between a donor and a particular research
45 or educational institution. In the case of a Section 9 anatomical gift of the entire body, or the

Comment: Do I have this right?

1 portion of the body made after a gift of organs, tissue, and eye, the donee may either be selected
2 by the individual making the gift or by the procurement organization.

3
4 It is common practice, particularly with respect to gifts evidenced by a statement or
5 symbol on the driver's license of the donor, for the donor to indicate nothing more than a general
6 intent to be an organ donor. For example, the driver's license of a donor may have an X in a box
7 labeled "organ donor." Prior law did not specify who would be the donee of the organs in such
8 cases. Section 13(d) of this [act] expressly provides that if a document of gift specifies only a
9 general intent to be an organ or body donor, such as would incur in the prior example, (1) only
10 the donor's parts (organs, eyes and tissue) are the subject of the gift and (2) the donee is the
11 appropriate procurement organization for that part. Individuals wishing to donate their entire
12 body for research or education, therefore, would have to do more than merely making a donation
13 on a driver's license evidenced by nothing more than a general intent to be an "organ donor."
14 See Comments to Section 5 relating to model donor cards and licenses. On the other hand, and
15 contrary to the existing laws of some states, a statement on a driver's license that the licensee is
16 an "organ donor" is an anatomical gift and not merely evidence of intention to want to be a
17 donor and as such organs can be procured without the need of a Section 9 gift. Likewise, as an
18 anatomical gift, under Section 8 surviving family members would be precluded from revoking
19 the gift.

20
21 Section 13(f) provides that custody of the parts of the decedent not used for
22 transplantation, therapy, research or education or the decedent's body if there is no donee vests
23 in the person having the obligation to dispose of the decedent's body. That person is typically
24 determined by other law or pursuant to agreement between the donor or person making the
25 Section 9 gift and the donee.

26
27 Under the common law, a gift is effectuated by intent, delivery, and acceptance. (But see
28 Section 14(a) regarding delivery). In common with general principles of gift law, an express
29 acceptance of an anatomical gift is not required. However, Section 13(g) provides certain bars on
30 the acceptance of an anatomical gift by a donee that would trump the "acceptance presumption."
31 A donee may not accept an anatomical gift if the donee knows of a Section 7 refusal. A donee
32 may not accept an anatomical gift if the donee knows that a gift once made had been revoked or
33 that a gift under Section 9 was not properly made. For example, suppose the intended donee of a
34 gift from children knows that the decedent's spouse is available and willing to make or refuse to
35 make a gift. The donee may not accept the purported gift from the children. The knowledge
36 requirement is subject to an imputed knowledge exception in the last sentence of Section 13(g).
37 If the donee has knowledge of an anatomical gift made on a particular donor registry, the donee
38 is deemed to have knowledge of any revocation of that gift or later refusal to make a gift on the
39 same donor registry as well. The obvious intent here is to preclude donees from searching a
40 particular registry to find a gift without searching the same registry to see if the gift has been
41 revoked or precluded. Again, nothing in this [act] requires a registry to have a refusal section
42

43 As noted above, federal laws and policies control the allocation of organs among needy
44 recipients. These laws preempt contrary state laws. Thus, it is appropriate that Section 13(h)
45 provides that nothing in the [act] shall be construed to affect the allocation of organs for

1 transplantation.
2

3 **SECTION 14. DELIVERY OF DOCUMENT OF GIFT.**

4 (a) The validity of an anatomical gift does not require delivery of a document of
5 gift during the lifetime of the individual whose body or part is the subject of the anatomical gift.

6 (b) Upon or after a decedent's death, any person in possession of a document of
7 gift or a record evidencing a refusal to make an anatomical gift with respect to the decedent shall
8 allow a person who is authorized to make or object to the making of an anatomical gift under this
9 [act] or is a potential donee under Section 13 to examine or copy the document of gift or refusal.

10 **Comment**

11 Section 14(a) rejects the common-law principle that a gift requires delivery to be
12 effective. Most anatomical gifts are made without any communication between the person
13 making the gift and the ultimate donee and, for obvious reasons. First, the donee is likely
14 unknown. Second, unlike other gifts, anatomical gifts are completely revocable. However, a
15 document of gift or a copy can be delivered to the donee and donors may do so in hopes of
16 expediting the retrieval procedures at their deaths.

17
18 This [act] does not affirmatively require any person in possession of a document of gift or
19 a record evidencing a refusal to make an anatomical gift to come forward at a decedent's death
20 with that information. That requirement would be onerous. On the other hand, a document of gift
21 or a refusal to make an anatomical gift may be in the possession of someone other than the
22 donor, particularly when made by means other than a driver's license or in a medical record.
23 Persons in possession of a document of gift or a record evidencing a refusal to make an
24 anatomical gift shall allow persons who can make or object to the making of an anatomical gift
25 to review and copy such records. They shall also allow potential Section 13 donees to examine
26 and copy such documents. Under Section 5, a document of gift includes a notation in the donor's
27 medical records. Release of that information does not violate HIPAA. See Comments to Section
28 15.
29

30 **SECTION 15. RIGHTS AND DUTIES OF PROCUREMENT ORGANIZATIONS**

31 **AND DONEES.**

32 (a) A procurement organization may conduct any reasonable examination

Comment: Commissioner Hillyard had a comment here but I cannot make it out. Does anyone recall the point?

Comment: (Is this really true?)

1 necessary to ensure the medical suitability of a part that is the subject of a prospective
2 anatomical gift for transplantation or therapy after a referral from a hospital.

3 (b) The donee of an anatomical gift may conduct any reasonable examination
4 necessary to ensure the medical or other suitability of the body or part for its intended purposes
5 at any time after the decedent's death.

6 (c) An examination under subsection (a) or (b) may include an examination of all
7 medical records of the individual whose body or part is the subject of an anatomical gift or a
8 prospective anatomical gift.

9 (d) Subject to Section 11, rights of a donee of an anatomical gift are superior to
10 rights of others. A donee may accept or reject an anatomical gift in whole or in part. If a donee
11 rejects a part for purposes of transplantation or therapy, the part may be used for research or
12 education if expressly permitted by the terms of the document of gift. If a donee accepts an
13 anatomical gift of an entire body, the donee, subject to the terms of the gift or to this [act], may
14 allow embalming and use of the body in funeral services. If the gift is of a part, the donee, upon
15 the death of the decedent and before embalming, shall cause the part to be removed without
16 unnecessary mutilation.

17 (e) Neither the physician who attends the decedent at death nor the physician
18 who determines the time of the decedent's death may participate in the procedures for removing
19 or transplanting a part.

20 (f) If there has been an anatomical gift, a technician may remove any donated
21 parts the technician is qualified and trained to remove and an enucleator may remove any
22 donated eyes or parts of eyes from the decedent.

Comment: Commissioner Pepe asks what a "prospective gift" is. Is my comment below sufficient?

Comment: How are we to deal, if at all with the possible tension between a donor who does not wish to be on life support and the need when the donor is "near death" to be on life support?

Comment: Should this apply to all health care providers? If so, we might need to deal specially with hospitals as death often occur in same hospital where removal or transplant will occur. Commissioner Pepe thinks there should be some exception here where no other physician is available. This has been [6]

Comment: Response to suggestion of Commissioner Stieff. I could as he suggested include enucleator in the definition of technician and they eliminate its use in the act but it both a nice wo... [7]

Comment

1 Under Section 14(a) procurement organizations may conduct a reasonable examination to
2 determine the medical suitability of a part that is the subject of a prospective anatomical gift.
3 This provision will work in tandem with federal routine request policies under which hospitals
4 refer prospective donors to an organ procurement organization to determine medical suitability.
5 If there is a known donee, that donee also is authorized to make a reasonable examination to
6 determine the medical or other suitability of the body or the part for its intended purposes.
7 (Section 14(b)). The permitted examination includes an examination of all medical records of the
8 donor or the prospective donor. This section is not inconsistent with Section 164.512(h) of the
9 HIPAA regulations permitting the disclosure without consent of protected health information “to
10 organ procurement organizations or other entities engaged in the procurement, banking, or
11 transplantation of cadaveric organs, eyes, or tissue for the purpose of facilitating organ, eye or
12 tissue donation and transplantation.”
13

14 **SECTION 16. COORDINATION OF PROCUREMENT AND USE.** Each hospital
15 in this state, after consultation with other hospitals and procurement organizations, shall
16 establish agreements or affiliations for coordination of procurement and use of human bodies and
17 parts.

18 **Comment**

19 42 CFR § 482.45 sets forth criteria requiring hospitals and organ procurement
20 organizations to have cooperative agreements to permit organ procurement organizations to
21 determine the medical suitability of organs for transplant. Furthermore in the absence of
22 alternative arrangements by a hospital, the organ procurement organizations have responsibility
23 to determine the medical suitability of tissues and eyes. Hospitals are also required to (1) have an
24 agreement with at least one tissue bank and one eye bank to cooperate in the retrieval,
25 processing, preservation, storage and distribution of eyes and tissue and (2) ensure, working with
26 organ procurement organizations, that families of potential donors are informed of the option of
27 donations of eyes, tissue, and organs.
28

29 **SECTION 17. SALE OR PURCHASE OF PARTS PROHIBITED.**

30 (a) Except as otherwise provided in subsection (b), if removal of a part from a
31 decedent is intended to occur after the decedent’s death, a person may not knowingly, for
32 valuable consideration, purchase or sell a part for transplantation or therapy.

33 (b) A person may make reasonable payment for the removal, processing,

Comment: S
ould I
expand on
this as there is
more under
the COP?

Comment: T
here was
much
comment
about this
section.
Points
included (1)
should it be
here at all; (2)
is it
appropriate to
have criminal
penalties in
the act; (3)
why limited to
transplantatio
n and therapy.
Also, check
NOTA
language.
Here is the
exact
language of
42 USC
274(e):

(a) Prohibition

It shall be
unlawful for
any person to
knowingly
acquire,
receive, or
otherwise
transfer any
human organ
for valuable
consideration
for use in
human
transpla... [8]

Comment: C
ommissioner
Stieff
recommended
some wording
changes here.
But it is
verbatim from
the prior act.
Should we
play with it to:
add what he
calls a
“culpability
standard.” He
also has some
further
suggestions.

1 disposal, preservation, quality control, storage, transportation, or implantation of a part.

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

5 **Comment**

6 This section, prohibiting the sale or purchase of organs intended to be removed from a
7 decedent after death, applies only to anatomical gifts. The National Organ Transplant Act, 42
8 U.S.C. § 274(e) contains a broader prohibition on sales applying to both anatomical gifts
9
10 intended to result in the removal of an organ from a donor during the donor’s life and following
11 the donor’s death.

12
13 The committee was urged to delete this section in the event that the federal prohibition
14 was later repealed or modified as some organizations, such as the AMA, have urged. The
15 argument is that if this section remains in the [act] but federal law is repealed, sales could not
16 occur in states enacting this section. The committee’s view was the policy against
17 _____

Comment: How is this to be completed?

18
19 **SECTION 18. NONLIABILITY.**

20 (a) Subject to subsection (c), a person who acts in accordance with this [act] or
21 with the applicable anatomical gift law of another state [or a foreign country] or attempts in good
22 faith to do so is not liable for the act in a civil action or criminal proceeding or subject to
23 discipline for unprofessional conduct.

Comment: Should there be any liability for knowingly making a donation when you know you or your loved one had HIV; hepatitis; etc.

24 (b) Neither the person making an anatomical gift nor the decedent’s estate is
25 liable for any injury or damage that may result from the making or the use of an anatomical gift.

Comment: What if the sale of an organ is permissible under foreign law. Are they exempt under Section 16?

26 (c) Subsection (a) does not apply to a donee to which a document of gift has been
27 delivered if the donee knows that the anatomical gift has been revoked or amended or that a
28 refusal to make an anatomical gift was made pursuant to Section 7 and the donee’s actions are
29 inconsistent with the revocation, amendment, or refusal. For this purpose, if the donee knows

Comment: Do we need to define good faith?

1 that a document of gift is on a particular donor registry, the donee is deemed to know of any
2 amendment or revocation of that document of gift or any refusal to make an anatomical gift that
3 is on the same donor registry.

4 **SECTION 19. CHOICE OF LAW AS TO EXECUTION OF DOCUMENT OF**
5 **GIFT.**

Comment: S
hould be
responsive to
Commissioner
Pepe.

6 (a) A document of gift is valid if executed in accordance with:

7 (1) this [act]

8 (2) the laws of the place where it was executed; or

9 (3) the laws of the place where the person making the anatomical gift was

10 domiciled, has a place of residence, or was a national at the time the document of gift was
11 executed.

Comment: S
omeone
suggested
national
should be
citizen but it is
"national" in
the UPC.

12 (b) A person may assume that a document of gift is valid unless that person
13 knows that it was not validly executed or was revoked.

14 **Comment**

15 Section 19 is new to the anatomical gift act. It is designed to accomplish two things.
16 First, it assures that a document of gift valid either in the place where executed, the place where
17 the person making the gift was domiciled, had a residence or was a national would be valid in
18 the state adopting this section. This section tracts like provisions for will, such as Section 2-506
19 of the Uniform Probate Code.

20
21 More importantly, Section 19(b) provides that a person can presume a document of gift to
22 be valid unless the person has actual knowledge that it was not validly executed or was revoked.
23 For example, if the person knows that the donor had signed a Section 6 refusal but the document
24 of gift was signed by the decedent's spouse following the decedent's death, the person knows
25 that the document of gift was not validly executed.
26

27 **SECTION 20. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
28 applying and construing this uniform act, consideration must be given to the need to promote

1 uniformity of the law with respect to its subject matter among states that enact it.

2 **SECTION 21. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**

3 **NATIONAL COMMERCE ACT.** This act modifies, limits, and supersedes the Electronic
4 Signatures in Global and National Commerce Act (15 U.S.C. Section 7001 et. seq.) but does not
5 modify, limit, or supersede Section 101(a) of that act (15 U.S. C. Section 7001) or authorize
6 electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C.
7 Section 7003(b)).

8 **SECTION 22. REPEALS.** The following acts and parts of acts are repealed:

9 (1)

10 (2)

11 (3)

12 **SECTION 23. SEVERABILITY.** If any provision of this [act] or its application to
13 any person or circumstance is held invalid, the invalidity does not affect other provisions or
14 applications of this [act] which can be given effect without the invalid provision or application,
15 and to this end the provisions of this [act] are severable.]

16 **SECTION 24. EFFECTIVE DATE.** This [act] takes effect _____.

Page 7: [1] Comment **Sheldon Kurtz** **9/15/2005 7:40 AM**

Style would add “who made such a gift” following the word “decedent.” I disagree. First, decedent is defined above. So it can not include all persons who die as suggested in the style draft in fn 10. Second, the word “donor” is intended to include decedent on whose behalf donations were made under Section 9. Thus, they would not have been decedents who made the gift.

Page 7: [2] Comment **Sheldon Kurtz** **9/8/2005 9:25 AM**

Transcript: Commissioner Lisman raised question of whether we want to include provisions regarding donor registries. Transcript has my response. I’m sticking with them.

Page 34: [3] Comment **Sheldon Kurtz** **9/26/2005 2:06 PM**

This was the subject of some discussion from Commissioner Hiliard. He thought “reasonable costs.” I think “direct” is more precise. A issue is the relationship between this and Medicare reimbursement. We will need some education from our observers.

Page 34: [4] Comment **Sheldon Kurtz** **9/26/2005 2:07 PM**

See concern expressed by Commissioner Klemin with response by Commissioners Nixon and McKay. Have we more to do here? Should we return to prior language so that if a person is found in a living room there can a search of the bedroom, given that the search must be “reasonable” and limited in scope.

Page 34: [5] Comment **Sheldon Kurtz** **9/9/2005 7:56 AM**

Responding to concerns of many commissioners. Is retaining this likely to raise too much of a fuss and does suggested new (b) below a better solution. But, this has been the law for years and there is no evidence of a fuss.

Page 41: [6] Comment **Alice Kurtz** **9/8/2005 4:21 PM**

Should this apply to all health care providers? If so, we might need to deal specially with hospitals as death often occur in same hospital where removal or transplant will occur. Commissioner Pepe thinks there should be some exception here where no other physician is available. This has been a long-standing provision and has provided no problems. Commissioner Guillot seems to have raised the same issue

Page 41: [7] Comment **Sheldon Kurtz** **9/8/2005 4:18 PM**

Response to suggestion of Commissioner Stieff. I could as he suggested include enucleator in the definition of technician and they eliminate its use in the act but it both a nice word and one particular to the eye community that it would be nice to retain it.

Page 42: [8] Comment **Alice Kurtz**

There was much comment about this section. Points included (1) should it be here at all; (2) is it appropriate to have criminal penalties in the act; (3) why limited to transplantation and therapy. Also, check NOTA language. Here is the exact language of 42 USC 274(e):

(a) Prohibition

It shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer any human organ for valuable consideration for use in human transplantation if the transfer affects interstate commerce.

(b) Penalties

Any person who violates subsection (a) of this section shall be fined not more than \$50,000 or imprisoned not more than five years, or both.

(c) Definitions

For purposes of subsection (a) of this section:

(1) The term "human organ" means the human (including fetal) kidney, liver, heart, lung, pancreas, bone marrow, cornea, eye, bone, and skin or any subpart thereof and any other human organ (or any subpart thereof, including that derived from a fetus) specified by the Secretary of Health and Human Services by regulation.

(2) The term "valuable consideration" does not include the reasonable payments associated with the removal, transportation, implantation, processing, preservation, quality control, and storage of a human organ or the expenses of travel, housing, and lost wages incurred by the donor of a human organ in connection with the donation of the organ.