

May 17, 2023

The Massachusetts Commission on Uniform State Laws
Massachusetts State House
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Dear Chairperson and Commissioners,

On June 9, the Uniform Law Commissioners will hold a virtual informal session to review proposed revisions to the Uniform Determination of Death Act (UDDA). As the sole organ procurement organization (OPO) in the region federally designated to coordinate organ and tissue donation for transplantation, New England Donor Services writes to express its deep concern and serious reservations regarding the current proposed UDDA draft document.

New England Donor Services (NEDS) is responsible for working with every hospital in the six-state region to identify potential organ donors, conduct thorough medical screenings, sensitively approach families for donation permission and coordinate all components of the donation including the surgical recoveries, allocation of the organs according to national waitlists, packaging and transportation. From the moment a patient has died, the entire process of donation must occur very quickly in order for the donated organs and tissues to be viable for transplantation. NEDS staff do not declare death (that is performed independently by a hospital physician). However, the critical work NEDS does and the thousands of families NEDS serves each year depends on the clarity and precision of the UDDA to provide uniformity and certainty in the law under the pressure of critically short timeframes in order for NEDS to successfully coordinate organ donation for transplantation. The importance of the UDDA to the life-saving mission of NEDS cannot be overstated.

The proposed UDDA draft now under discussion raises substantial concerns that could greatly interfere with the life-saving work of donation and transplantation. Specifically, the draft adds sections related to Notification, Time to Gather and Accommodation that are likely to introduce dis-uniformity, time delay and confusion regarding the death declaration process within the hospital setting. Such uncertainty will unnecessarily impede the work of both hospitals and organ procurement organizations such as NEDS. These provisions also inappropriately infringe on the practice of medicine and attempt to legislate complex family interactions that are better managed through hospital policies.

The proposed draft also updates the language in the Determination of Death provision, which although NEDS would support, these changes are part of a larger and evolving discussion in the medical community towards a unified brain-based definition of death that requires more time to gain the necessary consensus to ensure strong legislative support.

In discussing the current UDDA draft with OPO colleagues around the country, it is clear that there is no interest in supporting the currently proposed UDDA that includes substantive changes to provisions outside the determination of death definition that will result in non-uniform practices.

Furthermore, revisions to the UDDA should wait until the views within the medical community regarding a unified brain-based death definition have coalesced into a clearer consensus position that could be incorporated into the statutory language.

Inviting substantial controversy regarding death determination into the state legislative process by introducing the proposed UDDA will be a disservice to the donation and transplant community with very little potential benefit. When the Revised Uniform Anatomical Gift Act was updated in 2006, it was the OPO community that led its adoption in all 50 states. It would likely be difficult to move a revised UDDA forward given the current lack of support among OPOs at this time.

As your constituent OPO, NEDS urges you to vote against moving the proposed revised UDDA forward. Please let me know if you would like to discuss it further. I may be reached at sfitzpatrick@neds.org to set up a time to speak.

Sincerely,

A handwritten signature in black ink, appearing to read "Sean Fitzpatrick", with a stylized flourish at the end.

Sean Fitzpatrick
Chief Public Affairs Officer

cc: Alexandra Glazier, JD MPH President & CEO
Francis Delmonico, MD Chief Medical Officer