

D R A F T
FOR DISCUSSION ONLY

Uniform Determination of Death Act (20__)

Uniform Law Commission

June 9, 2023 Informal Session



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National Conference of Commissioners on Uniform State Laws

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May 30, 2023

Uniform Determination of Death Act (20__)

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1 **Uniform Determination of Death Act (20__)**

2 **Section 1. Title**

3 This [act] may be cited as the Uniform Determination of Death Act (20__).

4 **Section 2. Definitions**

5 In this [act]:

6 (1) “Health care” means care or treatment or a service or procedure to maintain,
7 monitor, diagnose, or otherwise affect an individual’s illness, injury, or condition.

8 (2) “Health-care institution” means a facility or agency licensed, certified, or
9 otherwise authorized or permitted by law to:

10 (A) provide health care in this state in the ordinary course of business; and

11 (B) make a determination of death under Section 3(a)(2).

12 (3) “Health-care professional” means a physician or other individual licensed,
13 certified, or otherwise authorized or permitted by other law of this state to provide health care in
14 this state in the ordinary course of business or the practice of the physician’s or individual’s
15 profession.

16 (4) “Physician” means an individual authorized to practice medicine under [cite to
17 state law authorizing the practice of medicine] [or osteopathy under [cite to state law authorizing
18 the practice of osteopathy]].

19 (5) “Record” means information:

20 (A) inscribed on a tangible medium; or

21 (B) stored in an electronic or other medium and retrievable in perceivable
22 form.

23 (6) “State” means a state of the United States, the District of Columbia, Puerto

Rico, the United States Virgin Islands, or any other territory or possession subject to the jurisdiction of the United States. The term includes a federally recognized Indian tribe.

(7) “Surrogate” means an individual recognized by other law of this state to make a health-care decision on behalf of another individual.

Comment

The definitions of “Health-care professional” and “Physician” are taken verbatim from the draft Uniform Health-Care Decisions Act for the May 30, 2023 Informal Session. The definitions of “Health care,” Health-care institution,” and “Surrogate” are based on the draft Uniform Health-Care Decisions Act for the May 30, 2023 Informal Session, modified for context. The definitions of “Record” and “State” are standard Uniform Law Commission definitions.

Section 3. Determination of Death

(a) An individual is dead if the individual has sustained:

Option 1

- (1) irreversible cessation of circulatory and respiratory functions; or
- (2) irreversible cessation of all functions of the entire brain, including the brain stem.

Option 2

- (1) permanent cessation of circulatory and respiratory functions; or
- (2) permanent
 - (A) coma,
 - (B) cessation of spontaneous respiratory functions, and
 - (C) loss of brainstem reflexes.

End of Options

(b) A determination of death under subsection (2) must be made in accordance with accepted medical standards.

1 **Comment**

2 Option 1 is the first sentence of Section 1 of the Uniform Determination of Death Act (1980), as
3 revised by the Committee on Style in April 2023. Option 2 is an alternative Option. The Options
4 in this draft are offered for discussion, recognizing a State would adopt one (and only one)
5 Determination of Death provision.
6

7 **[Section 4. Time to Gather**

8 After the individual is determined to be dead under Section 3(a)(2) but before
9 discontinuation of circulatory and respiratory support of the individual, the health-care institution
10 shall allow a reasonable time for those designated by the individual’s surrogate to gather at the
11 individual’s bedside.]

12 ***Legislative Note:** A state should include this section if it wishes to provide this time to gather.*
13

14 **[Section 5. Notification**

15 (a) As used in this section “clinical evaluation to determine death” means a formal
16 process at a health-care institution to establish that an individual is dead, in accordance with
17 accepted medical standards, by:

18 (1) circulatory and respiratory criteria under Section (3)(a)(1); or

19 (2) neurologic criteria under Section (3)(a)(2).

20 (b) Before a health-care professional begins a clinical evaluation to determine death
21 under Section 3(a)(2), the health-care institution shall make a reasonable effort to notify the
22 individual’s surrogate that the evaluation will begin.]

23 ***Legislative Note:** A state should include this section if it wishes to require this notification.*
24

25 **[Section 6. Accommodation**

26 (a) An individual may object to a determination of death under Section 3(a)(2).

27 (b) An objection under subsection (a) must be expressed in the individual’s medical
28 records or through information provided to the health-care institution by an individual’s

1 surrogate.

2 (c) A health-care institution shall adopt a policy in a record that sets forth the reasonable
3 efforts it will make to accommodate an objection under subsection (a). The policy must:

4 (1) require the institution to comply with the individual's choice that a
5 determination of death not be made under Section 3(a)(2); and

6 (2) provide that an objection must be made before beginning the clinical
7 evaluation for the determination of death under Section 3(a)(2).]

8 **Legislative Note:** *A state should include this section if it wishes to allow for this accommodation.*

9

10 **Section 7. Uniformity of Application and Construction**

11 In applying and construing this uniform act, a court shall consider the promotion of
12 uniformity of the law among jurisdictions that enact it.

13 **[Section 8. Severability**

14 If a provision of this [act] or its application to a person or circumstance is held invalid,
15 the invalidity does not affect another provision or application that can be given effect without the
16 invalid provision.]

17 **Legislative Note:** *Include this section only if the state lacks a general severability statute or a*
18 *decision by the highest court of the state stating a general rule of severability.*

19

20 **Section 9. Repeals; Conforming Amendments**

21 (a) [The Uniform Determination of Death Act] is repealed.

22 (b) . . .

23 **Legislative Note:** *A state that has enacted the Uniform Determination of Death Act or*
24 *comparable statute should repeal it.*

25

26 *A state should examine its statutes to determine whether repeals or conforming revisions are*
27 *required by . . .*

28

29 **Section 10. Effective Date**

1 This [act] takes effect . . .