

**AMENDMENT TO
REVISED UNIFORM ANATOMICAL GIFT ACT
March 26, 2007**

Section 21 is amended to read:

SECTION 21. EFFECT OF ANATOMICAL GIFT ON ADVANCE HEALTH-CARE DIRECTIVE.

(a) In this section:

(1) “Advance health-care directive” means a power of attorney for health care or a record signed or authorized by a prospective donor containing the prospective donor’s direction concerning a health-care decision for the prospective donor.

(2) “Declaration” means a record signed by a prospective donor specifying the circumstances under which a life support system may be withheld or withdrawn from the prospective donor.

(3) “Health-care decision” means any decision ~~made~~ regarding the health care of the prospective donor.

(b) If a prospective donor has a declaration or advance health-care directive, and the terms of the declaration or directive and the express or implied terms of a potential anatomical gift are in conflict with regard to the administration of measures necessary to ensure the medical suitability of an organ a part for transplantation or therapy may not be withheld or withdrawn from the prospective donor, unless the declaration expressly provides to the contrary, the prospective donor’s attending physician and prospective donor shall confer to resolve the conflict. If the prospective donor is incapable of resolving the conflict, an agent acting under the

prospective donor's declaration or directive, or, if none or the agent is not reasonably available, another person authorized by law other than this [act] to make health-care decisions on behalf of the prospective donor, shall act for the donor to resolve the conflict. The conflict must be resolved as expeditiously as possible. Information relevant to the resolution of the conflict may be obtained from the appropriate procurement organization and any other person authorized to make an anatomical gift for the prospective donor under Section 9. Before resolution of the conflict, measures necessary to ensure the medical suitability of the part may not be withheld or withdrawn from the prospective donor if withholding or withdrawing the measures is not contraindicated by appropriate end-of-life care.

Comment

This section differs from Section 14(c). That section provides that measures necessary to ensure the medical suitability of a part not be withdrawn while an examination is being made to determine whether an individual who has been referred to a procurement organization has a part that could be the subject of an anatomical gift. It applies when a patient on life support systems is referred to a procurement organization for evaluation as a prospective donor as required under federal rules relating to required referrals. If, following such an examination, it is determined by the procurement organization that the individual has a part that could be the subject of an anatomical gift, the individual is a prospective donor under this ~~{act}~~ section unless the individual had signed a refusal. In light of the definition of a prospective donor, see Section 2(22), this section ~~would also apply~~ also applies to a donor near death who has medically suitable organs for transplantation as determined by the organ procurement organization. See Section 2(22).

~~Measures necessary to insure the medical suitability of an organ for transplantation or therapy may not be withheld or withdrawn from a prospective donor who has an advance health-care directive or declaration unless the directive or declaration expressly provides to the contrary. The purpose of this section is to recognize a potential tension between the intent to make an anatomical gift and the intent to not have life support systems administered merely to prolong a life. The section presumes that for prospective donors the desire to save lives by making an anatomical gift trumps the desire to have life support systems withheld or withdrawn. Such measures are necessary for only a brief period of time. Individuals who desire to overcome this presumption can do so by express language in their advance health care directive or declaration.~~

If a prospective donor made an anatomical gift under Section 5 or the prospective donor's family contemplates making an anatomical gift under Section 9 and the prospective donor signed an advance health-care directive or declaration expressing the intent to have life support systems

withdrawn, a potential conflict arises between that intent and the need to administer certain measures to ensure the medical suitability of any part that could be the subject of an anatomical gift. For example, the prospective donor may have expressed the intent to have a respirator withdrawn in a declaration, yet it may be necessary to continue a respirator to assure the medical suitability of a donated part.

If this conflict exists, it becomes necessary to determine the prospective donor's actual or likely intent to resolve it. Of course, if the prospective donor is able to do so, the prospective donor's decision controls. If the prospective donor is unable to resolve the conflict, it is resolved by the prospective donor's agent. If there is no agent, the conflict is resolved by another individual authorized by other law to make health-care decisions on the prospective donor's behalf. While the consultation occurs, measures necessary to ensure the medical suitability of the part shall continue to be administered unless the administration would be contraindicated by appropriate end of life care.

The decision of the prospective donor, agent, or other individual whether or not to withdraw the life support system is final. This process recognizes that it is the intent of the prospective donor as determined by the prospective donor or those designated by the prospective donor or by law that is paramount, even though a decision to withdraw life support may result in the loss of parts for transplantation or therapy.

The conflict should be resolved as expeditiously as possible. Furthermore to assist in resolving the conflict and providing the decision maker with necessary medical information, the decision maker shall consult with the prospective donor's attending physician, presumably about all medical matters relating how the continued administration or withdrawal of the measures would affect the patient. Any consultation may also include the appropriate procurement organization and any other person authorized under Section 9 to make an anatomical gift. The procurement organization presumably provides information relating to why the continued administration of the measure is necessary, the length of time they would be necessary, and other relevant information.