
REVISED UNIFORM ANATOMICAL GIFT ACT (2006)

DATE: MARCH 21, 2006
TO: THE DRAFTING COMMITTEE FOR THE REVISED UNIFORM ANATOMICAL GIFT ACT
FROM: SHELDON F. KURTZ, NATIONAL CONFERENCE REPORTER
RE: MEETING IN DETROIT

The following memo is intended to guide us, in part, through our discussion of the April 2006 draft of the Revised Uniform Anatomical Gift Act (2006). This draft has been styled with the result that there has been some reorganization. Thus, the section numbers in this draft after section 8 do not correspond with the prior drafts. Where I thought style's change affected substance (which was rare), I've worked it out with Jim McKay.

Section 2. Definitions

(3) "Custodian." Following the Fall meeting, informal discussions among me and the observers led to a solution for your consideration regarding the characterization of OPOs as donees. In prior drafts organs that passed into the national OPTN system were deemed to pass to the OPO as donee. In this draft, the OPOs are referred to as "custodian." This term is more descriptive of the role of the OPOs in the national organ allocation system.

(5) "Disinterested witness." Oral gifts, revocations, and refusals can be made under limited circumstances before two witnesses. At least one of them must be a disinterested witness. The term is defined in the draft to mean an individual other than the individual's spouse, child . . . The notion here is that if a terminally ill donor wishes to orally make an anatomical gift or revoke one, that at least one of the two witnesses **not** be related to the donor as set forth in the definition. The word "donor" however is not used because under Section 7 an individual can be a refuser and if a refusal is done orally at least one of the witnesses to the refusal cannot be related.

At a recent UNOS meeting it was suggested that a disinterested witness should also exclude donees and custodians. I suggest the draft be appropriately revised by adding a sentence as the end reading: "The term includes a donee, custodian, and recipient."

(6) "Document of gift." In the prior drafts numerous references in the substantive sections were made to licenses and registries as well as records. In this draft "document of gift" has been re-defined to expressly include the license and the statement or symbol on a donor registry as a document of gift.

(13) "License." This definition is new to this draft and allows for some shortening of the statute in later sections by avoiding references to both the license and state-identification card. It also provides that the license can be a document of gift even though the licensee or permittee must be accompanied by another individual when operating the motorized vehicle.

The committee may wish, however to consider the following as a substitute definition: **“License”** means a license or permit to operate a motorized vehicle without regard to whether there are conditions attached to the issuance of the license or permit. The term includes an identification card issued by the [state department of motor vehicles]. This definition would ignore all conditions unlike the more limited definition in the draft.

(19) “Prospective donor.” This definition is new to this draft. The prospective donor has a role in multiple sections.

(23) “Refusal” is also new to this draft.

(27) “Tissue” is new to this draft and the definition is drafted in such a way as to avoid blood from being considered a part under the act unless the blood is donated for research or educational purposes.

Section 4. Who May Make an Anatomical Gift Before Donor’s Death

This section is essentially unchanged except for the addition of donors under the age of 18 who, under other law, may be entitled to apply for a license. At our last meeting it was agreed that if an under-age-18 donor died under age 18, the donor’s parents would be entitled to revoke the anatomical gift. This is accomplished by Section 8(g).

Section 5. Manner of Making Anatomical Gift before Donor’s Death

This section is essentially unchanged except for the addition of authority for donors who are terminally ill or injured to orally make an anatomical gift before two witnesses, one of whom is disinterested. This section should be reviewed in light of the definition of disinterested witness (Section 2 (5)) to make sure it works.

Dr. Robert Sade (a/k/a “Dr. Bob”) has raised the question of whether the phrase “terminal illness or injury” is correct. He argues there is no such thing as a terminal injury. Other doctors I’ve spoken with had no problem with that concept as not all injuries are terminal. Anyway, we should discuss this phrase.

In a recent article a suggestion was made that documents of gift should be dated as well as signed. There is no “dated” requirement in this draft or prior versions of the act. Dating would be helpful in sorting out conflicting documents but, if required to make an effective gift, could result in a document of gift being ineffective because it was not dated. I hesitate to add execution requirements that could adversely affect the making of a gift. I’d also note that there is no dating requirement for the execution of a valid will where similar problems can arise with respect to later-executed instruments.

Subsection (a)(3) requires that a record signed by a third party on the donor’s behalf state that it was signed and witnessed at the request of the donor. A question has been raised whether this additional formality (drawn in part from the typical Statute of Wills) creates a pitfall for the unrepresented donor who might not think to include such a statement in the record. Perhaps it should be deleted.

I’ve restructured the model anatomical gift card to hopefully take account of Jack Davies suggestions. **Jack, have I got it?**

It has been suggested (Prewitt article) that a provision be added requiring motor vehicle officials to ask applicants whether they wish to be donors or refusers. While I don't recommend the latter (refusers), should we go with the former, or is that best left to other law?

Section 6. Amending or Revoking Anatomical Gift Before Donor's Death

This section is essentially unchanged except for the addition of the disinterested witness requirement.

Section 7. Refusal to Make Anatomical Gift

This section is essentially unchanged. It adds the disinterested witness requirement to an oral refusal and allows for the revocation of a refusal by the destruction of the documents evidencing the refusal.

Section 8. Effect of Anatomical Gift, Amendment, Revocation or Refusal

Subsection (g) permits parents of a donor who dies under the age of 18 to revoke the gift. I've included in subsection (h) a complimentary provision for refusals. **Should we include this in the act?**

Section 9. Who May Make an Anatomical Gift of Decedent's Body or Part

Subsection (b) incorporates changes approved at the last drafting committee meeting. The current act bars a member of a class from making a gift if the class member knows another member of the class objects. This version adds that if an objection is known the gift can be made by a majority of the class members who are reasonably available. Thus, suppose a prospective donor has three children but only one is reasonably available. That child can make the gift even though the child knows that an absent sibling objects. If two children are reasonably available and one of them knows that the unavailable child objects, the gift can only be made if the two available children agree.

Section 10. Manner of Making or Revoking Anatomical Gift After Decedent's Death

This section is essentially unchanged from the prior draft.

Section 11. Persons Who Can Receive An Anatomical Gift

This section has been redrafted to recast the OPOs as custodians of organs that flow through the national allocation system rather than donees. Donees are limited to hospitals, eye and tissue banks and in the draft before you "a named individual designated by the person making the anatomical gift if the named individual is the recipient of the part." At a March meeting with a UNOS committee concerns were raised that the named individual could wind up with an organ in an inequitable manner. The particular hypo dealt with an incident in Texas where a liver patient used billboards to advertise for an organ and received a donation allowing that person to jump ahead of the person on the list. I told the UNOS committee that I would proffer language to address that concern. Here it is:

"a named individual designated by the person making the anatomical gift if the named individual is the recipient of the part and, in the in the case of a gift of an organ, the organ can be allocated to the recipient in accordance with applicable

REVISED UNIFORM ANATOMICAL GIFT ACT (2006)

federal law and policies relating to the allocation of organs for transplantation and therapy.”

I will be explaining this suggestion more fully at the April meeting and talk of a proposed or adopted UNOS guidelines relating to gifts only to person having a preexisting relationship with the donor or family member. I have made no commitments regarding whether this changes or one with a similar purpose would be acceptable to the committee.

Section 12. Search and Notification

This section is very similar to the earlier draft. Subsection (b) (bracketed) is new and imposed on persons having access to motor vehicle records an obligation to search them to determine if a person they find dead or near death is a donor. I suppose this obligation is implicit in subsection (a) which is a carryover from existing law but I added this subsection to make the search explicit. Violators of this section would be subject to administrative sanctions only.

Section 13. Delivery of Document of Gift

This section is essentially unchanged.

Section 14. Rights and Duties of Procurement Organization, Donee, and Custodian

This section is essentially the same as the earlier drafts. It now includes a bracketed provisions allowing OPOs access to state department of motor vehicle records to ascertain donor information regarding person who are dead or near death. It requires OPOs to make reasonable searches for the parents of donors who dies under age 18 because under this draft those parents have the right to revoke the anatomical gift.

A concern about subsection (i) which parrots prior acts was raised at the UNOS meeting although I'm not sure it is a major concern. The question arose as to whether a surgeon present with a non-heart beating donor was the “physician who attends the decedent.” The answer should be no and I think this can be handled in the comments. “Attends” in medical parlance has a well-established meaning and refers to one who cares for (and/or had primary responsibility for the care of) the decedent.

Section 15. Coordination of Procurement and Use

This section remains unchanged from prior acts

Section 16. Sale and Purchase of Parts Prohibited.

I have revised subsection (b) to put it into the positive. This section continues to be limited to anatomical gift. It applies to all parts. It does not apply to whole body donation.

Section 17. Nonliability

This section is essentially unchanged.

Section 18. Law Governing ...

This section is essentially unchanged.

Section 19. Donor Registry

This section is entirely new. It provides three basic minimums for a donor registry. They are that the registry be electronic, accessible by all procurement organizations, and be operational on a 24/7 basis. Also, the registry is not to be used for fundraising. There are also some optional provisions. Subsection c allows for the distribution of registry information to procurement organizations. I don't think that section should be bracketed. Is (d) advisable? If subsections (d) and (e) (bracketed) are include as unbracketed sections, then subsection (d) becomes (f).

Subsection (e) (bracketed) would be necessary only in states that have separately operated registries and anatomical gifts on licenses and the registry is created under the auspices of a state department other than the department of motor vehicles. There is a typo in the legislative note. It should be Subsection (e) not (c).

Subsection (d) at the end of the section allows registries to be created by private organizations without the imprimatur of the state. It would not require collaboration in states where registries are established as they are entitled to be under subsection (d) without the imprimatur of the state.

Section 20. Relationship Between Anatomical Gift and Declaration . . .

This section is new. We have to choose between three alternatives. The first two differ only with respect to where the "unless" clause appears. The last spells out the concept underlying "otherwise provides."

Section 21. Cooperation Between Coroner/Medical Examiner and Procurement Organizations and Donees

First, this section should probably be re-titled to include Custodians. The section is much like we saw it in prior versions except that some of the provisions in the prior version are now in Section 22 which could be included in this act or included among other state statutes relating the relationship between the organizations.

Section 22. Facilitation of Anatomical Gift . . .

In the prior version the provisions of this section and Section 21 were incorporated in the same section. The provisions in Section 22 are those provisions which a state might codify as part of the anatomical gift act or in the section of the code dealing with coroners or medical examiners.

The rest of the material is boilerplate.