## **LiveOn**NY



### What New York Hospitals Need to Know About: New York's Anatomical Gift Law Changes effective June 23, 2020 Public Health Law PHL § 4300, § 4301, § 4305 & § 4306



The intention of the 2020 changes to New York State's Public Health law related to anatomical gifts is to strengthen the autonomy of donors and increase the state's rates of organ and tissue donation, resulting in more lives saved through transplantation. While New York has made recent improvements to its organ donation registry and processes, it still faces a severe organ shortage.

This legislation incorporates more explicit statutory definitions as well as clarifications to process and interpretation. It aligns New York State law more closely to the federal Uniform Anatomical Gift Act (UAGA) that was enacted in 1968 following the first successful heart transplant, was revised in 1987 and 2006 and has been adapted into law in all states. It is expected that simply bringing state anatomical gift rules into agreement with the UAGA will result in increased numbers of organ donors in New York, thus more lives saved.



The law establishes the organ procurement organization (OPO) as the caretaker or custodian of the anatomical gift to maintain the opportunity for donation. For every patient who has not made a decision about organ donation and not refused, the hospital and **LiveOn**NY shall collaborate to maintain medical suitability until the OPO has ascertained the individual's intent and acted, based on that intent.

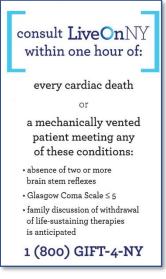


The revised law specifies: "The hospital shall not withdraw any measures that are necessary to maintain the medical suitability of the [body] part until the procurement organization has had the opportunity to advise the applicable persons . . . of the option to make an anatomical gift, has

documented or acted upon that decision, or has ascertained that the individual expressed a contrary intent."

ALL patients must be referred to LiveOnNY prior to vent withdrawal, when a family discussion is anticipated, as specified in the Organ Donation Clinical Triggers [*right*].

**LiveOn**NY is required to act expeditiously to fulfill its responsibilities to maintain the opportunity for donation with regard to the "prospective donor", defined as "an individual who is dead or near death and has been determined by a procurement organization to have a [body] part that could be medically suitable for transplantation, therapy, research, or education." This "does not include someone who has made a refusal," or expressly documented an intent to bar other persons from making an anatomical gift.



Organ Donation Clinical Triggers



The autonomy of the donor is strengthened by this clarification of the definition of a "prospective donor" as well as what constitutes a "refusal." The law also provides further protection of the donor's rights with regard to revoking their documented donor designation post-mortem, requiring either later-executed legal documentation or an oral statement of revocation made in the presence of two people, one of

whom is a neutral and objective "disinterested witness." Actual notice of contraindication is required. A family member stating that they heard the individual say they no longer wished to donate, for example, or citing that he/she would never have wanted to be a donor because of their religious beliefs, does not, alone, suffice to revoke a donor's self-designation. Additionally, removal from the donor registry does not equate to refusal to make a gift.

# LiveOnNY

The law now stipulates that in cases where the terms of an advance health care directive or proxy document concerning life-sustaining treatment are in conflict with the administration of measures necessary to ensure the medical suitability of a body part for transplantation or therapy, the physician and the "prospective donor" shall confer to expeditiously resolve the conflicting directives, with information from the OPO.

When the prospective donor has not legally documented his/her wishes, there are several changes to the law that pertain to families of a prospective donor.



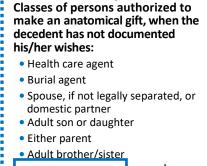
Adult grandchildren and grandparents join the order of priority of classes of persons authorized to make an anatomical gift on behalf of the decedent. The new order of priority more fully represents New

York's family structure in today's world, where in some cases grandchildren or grandparents are head of household.

The "Order of Priority" table [*right*] lists the revised hierarchy of classes who can authorize an anatomical gift. When an individual from the first class in the order of priority does not exist or is not reasonably available, the decision-making authority defers to the next class, and continues to skip to the next class where there is an individual who is identified and reasonably available.

The term "reasonably available" is more clearly defined in the new legislation as "able to be contacted by a procurement organization without undue effort and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift."

#### **Order of Priority**



### Adult grandchildren Grandparents Guardian of the person of the

- decedent
- Any other person authorized or under obligation to dispose of the body

Except in the case of parents, an anatomical gift may only be made by if that person does not know of an objection by another in the same class. If an objection is known, the gift may be made by a simple majority of the members of that class who are reasonable available. The party(ies) authorizing donation are asked to certify that they a) do not know of any refusal or contrary indications by the donor to these gifts, or b) know of an objection by another authorized party in the same class who is reasonably available.



### From Best Practice to Common Practice

The Hospital	The OPO	Autonomy of the donor	Family Considerations	Collaboration Hospital & LiveOnNY
<ul> <li>Maintain medical suitability until the</li> </ul>	<ul> <li>Steward every anatomical gift as</li> </ul>	<ul> <li>Protects the rights of self-designated donors</li> </ul>	<ul> <li>Adult Grandchildren and grandparents can now authorize</li> </ul>	<ul> <li>Maintain medical suitability until the OPO has ascertained</li> </ul>
OPO ascertains	caretaker/custodian	<ul> <li>Honor their wishes</li> </ul>	donation	the individual's intent and
individual's intent and	<ul> <li>Act expeditiously to</li> </ul>	<ul> <li>Resolve end-of-life</li> </ul>	<ul> <li>"Majority Rule" when a member of</li> </ul>	acted, based on that intent
can act on it	maintain opportunity for	conflicting advance	the class authorized to make an	Conflict Resolution for
<ul> <li>Timely notification of anticipation of vent</li> </ul>	donation with regard to a	directives	anatomical gift has an objection	advance directives: physician
withdrawal	"Prospective Donor" • Attempt to locate and	• A neutral and objective "Disinterested Witness"	<ul> <li>When the party authorized to donate is not "Reasonably Available"</li> </ul>	and prospective donor confer, with information from the
<ul> <li>Inclusion of the</li> </ul>	contact "Reasonably	is required to revoke or	and willing/able to act timely with	OPO, while medical suitability
option for donation in	Available" persons who	amend an authorization	regard to donation, the authority to	maintained
end-of-life care	may authorize donation		donate skips to the next class	

#### References:

2019 New York Senate Bill No. 6000-A, New York Two Hundred Forty-Second Legislative Session.

Strong, C., Tator, A., Thibault, M. (2020, January 23). Improving New York's Donation Process – New York Gift Act: Next Steps [Webinar]. Donate Life NYS.

New York's Anatomical Gift Act 2020 Changes. [Memo] Donate Life New York State.