

State of New Jersey

**N J L R C**

**New Jersey Law Revision Commission**

**FINAL REPORT**

relating to

**UNIFORM ANATOMICAL GIFT ACT**

December 1999

**NEW JERSEY LAW REVISION COMMISSION**  
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## INTRODUCTION

Ten years ago the New Jersey Law Revision Commission referred its Report and Recommendations on the Uniform Anatomical Gift Act (1987) to the Legislature. The Commission recommended adoption of the 1987 UAGA but took no position on sections of the Uniform Act which differed from two then-recent New Jersey legislative policy enactments: N.J.S. 26:6-60.1, the 1985 routine inquiry law; and N.J.S. 26:6-58.1, the 1987 required request law. Since the Commission issued its Report in March of 1989, the New Jersey Legislature has further amended – in 1989, 1995 and 1998 – its version of the original 1968 UAGA. Additional state and federal regulations have nullified and superseded several provisions of the Act. However, the most essential provisions of New Jersey state law and federal law are consonant, due to recent amendments to both. Adoption of any provisions of the 1987 UAGA would risk placing state and federal laws in conflict and in some cases moving backwards from positive change.

The Commission no longer recommends the enactment of the Uniform Anatomical Gift Act. The New Jersey statutes include several provisions which are not in the Uniform Act and which should be retained. (Examples include N.J.S. 26:6-59 which adds college programs for mortuary science students to list of eligible donees of bodies or body parts; and N.J.S. 26:6-60 which adds eye bank technicians and medical students to list of persons allowed to remove eyes.)

However, some revision is necessary to bring New Jersey into full conformity with federal regulations and modern practice. The Commission recommends the following amendments to New Jersey's Anatomical Gift Act.

### **26:6-58.1. Anatomical gift consent**

~~a. When the decision has been made in a hospital to pronounce the death of a person who, based on accepted medical standards, is a suitable candidate for human body part donation, the person in charge of the hospital, or that person's designated representative, other than a person connected with the determination of death, shall make known to any of the following persons, in order of priority stated, when persons in prior classes are not available at the time of death and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or a prior class specified in paragraph (1), (2), (3), (4), (5) or (6) of this subsection, or when there is any other reason to believe that an anatomical gift is contrary to the decedent's religious beliefs, that the person has the option to consent to the gift of all or any part of the decedent's body for any purpose specified in section 3 of P.L.1969, c.161 (C.26:6-59):~~

At or around the time of death of a patient in a hospital licensed pursuant to P.L.1971, c.136 (C. 26:2H-1 et seq.), the hospital shall notify its designated organ procurement organization. If the patient has a validly executed donor card, donor designation on a driver's license, advance directive pursuant to P.L.1991, c.201 (C. 26:2H-53 et seq.), will, other document of gift, or registration with a Statewide organ and tissue donor registry, the organ procurement organization representative or the designated requestor shall attempt to notify a

person listed below of the gift. If no document of gift is known to the organ procurement organization representative or designated requestor, one of them shall ask the persons listed below whether the decedent had a validly executed document of gift. If there is no evidence of an anatomical gift nor actual notice of contrary indications by the decedent, the organ procurement organization representative or the designated requestor shall attempt to inform a person listed below of the option to donate organs or tissues. Consent need only be obtained from an available person in the highest priority class applicable but an anatomical gift shall be barred by actual notice of opposition by a member of the same or a prior class. If no available member of a class will make a decision, the organ procurement organization representative or the designated requestor shall approach members of the next class.

b. The classes in order of priority are:

- (1) the spouse,
- (2) an adult son or daughter,
- (3) either parent,
- (4) an adult brother or sister,
- (5) a guardian of the person of the decedent at the time of the decedent's death, or
- (6) any other person authorized or under the obligation to dispose of the body. ~~Consent or refusal need only be obtained from a person in the highest priority class available.~~

c. For purposes of this section, a person is available, if that person can be approached within a time period compatible with effecting an anatomical gift.

d. The person in charge of the hospital or that person's designated representative shall indicate in the medical record of the decedent whether or not consent was granted, the name of the person granting or refusing the consent, and that person's relationship to the decedent.

e. A gift made pursuant to the request required by this act shall be executed pursuant to the applicable provisions of P.L.1969, c.161 (C.26:6-57 et seq.).

f. A person who acts in good faith in accordance with the provisions of this act is not liable for any damages in any civil action or subject to prosecution in any criminal proceeding for any act or omission of the person.

g. If the decedent is deemed an unsuitable candidate for donation, an explanatory notation shall be made part of the medical record of the decedent.

#### **COMMENT**

Subsection (a) has been rewritten to reflect current practice under applicable federal regulations. The first sentence of subsection (a) is derived from 26:6-58.7. The second sentence incorporates the language of describing what constitutes evidence of anatomical gifts, which the Legislature added to 26:6-60 as new subsection (f) last year (L.1998, c.81). Subsection (c) is new. It explains the meaning of "available as used in this section.

## **26:6-58.7. Hospital notification to organ procurement organization**

~~An acute care hospital licensed pursuant to P.L.1971, c.136 (C.26:2H 1 et seq.) shall notify and provide pertinent medical information to the organ procurement organization designated pursuant to 42 U.S.C.273(b) concerning each death occurring in that hospital.~~

### **COMMENT**

This section has been incorporated into the first sentence of 26:6-58.1.

## **26:6-60.1. Anatomical gift ascertainment**

~~A hospital shall, if possible, ascertain from a patient upon admission whether or not the patient has made a gift of all or part of the patient's body pursuant to section 4 of P.L. 1969, c. 161 (C. 26:6-60), and the donee, if any, to whom the gift has been made.~~

### **COMMENT**

New Jersey's routine inquiry law has not been amended since its inception, L.1985, c.284, §1. It contemplates that every hospital employee will make inquiry about organ donations. However, federal COP regulations (Medicare Conditions of Participation) limit those who are allowed to make requests concerning organ donations:

“The individual designated by the hospital to initiate the request to the family must be an organ procurement representative or a designated requestor. A designated requestor is an individual who has completed a course offered or approved by the OPO and designed in conjunction with the tissue and eye bank community in the methodology for approaching potential donor families and requesting organ or tissue donation;”  
42 CFR 482.45(a)(3) (June 19, 1998)

Moreover, organ procurement organizations (OPO) have concluded that inquiries made when patients are admitted are counter-productive. Proposed section 26:6-58.1 provides for trained persons to inquire about anatomical gifts “at or around the time of death.”

## **26:6-60.2. Hospital records required**

A hospital shall maintain, as part of a patient's permanent record, the information required under this act and any other pertinent information concerning the anatomical gift which will facilitate the discharge of the patient's wishes in the event of the patient's death. ~~Upon the death of a patient who has made an anatomical gift, a hospital shall make every good faith effort to contact, without delay, the donee, if any, to whom the gift has been made.~~

### **COMMENT**

Under federal law and local practice, the organ procurement organization, not the hospital, is the sole entity responsible for contacting the donee.