

Nebraska County Attorney's Association: Coroner Position Statement In cooperation with the Nebraska Organ Recovery System

It is in the best interests of all Nebraskans that Nebraska County Attorneys, acting in the coroner role, work collaboratively with Nebraska Organ Recovery System to preserve the donation opportunity for individuals who wish to donate, their families, and waiting recipients for situations under their jurisdiction.

In accordance with the laws of Nebraska and in the best interests of Nebraskans, all efforts will be made to maximize donation in situations involving coroner investigations. The success of this effort is dependent on effective communication and collaboration between the county attorneys, law enforcement, pathologists, and Nebraska Organ Recovery System (NORS).

Support:

According to Nebraska Revised Statutes for Organ and Tissue Donation 23-1825 to 23-1832 and Revised Uniform Anatomical Gift Act -71-4824, the local regional recovery agencies, (Nebraska Organ Recovery (NORS) and Lions Eye Bank Nebraska (LEBN)) will work collaboratively with the county attorneys, law enforcement investigators and appointed Coroner's physician on potential and actual organ and tissue cases.

The county attorney acting as the coroner, plays an important role in ensuring successful organ and tissue donation process. Since all unexpected deaths require some type of death investigation and coroner's review or determination, their cooperation and support is vital for organ and tissue donations, which benefits thousands of transplant recipients in Nebraska and across the county each year.

NORS will work collaboratively with county attorneys, law enforcement and pathologists in the referral and evaluation of potential organ and tissue donors to broaden the donation options for donor families, while preserving evidence for death investigations to determine the cause and manner of death. Upon request, NORS may be able to provide additional diagnostic testing, specimen collection and photographic documentation to support the case.

The county attorneys, law enforcement and pathologists all play a significant role in helping both grieving donor families and transplant patients in need of lifesaving, life-improving tissue grafts by notifying and cooperating with NORS on any deaths that occur both in or out of hospital deaths. It is in the best interests of Nebraskans and is a great service to those in need of transplants and to surviving families and friends who choose donation.

23-1825.

Organ and tissue donations; legislative findings.

The Legislature finds and declares that it is in the public interest to facilitate organ and tissue donations pursuant to the Revised Uniform Anatomical Gift Act and thereby to increase the availability of organs and tissues for medical transplantation. To accomplish these purposes, the following constitutes the procedure to facilitate the recovery of organs and tissues from donors under the jurisdiction of a coroner within a time period compatible with the preservation of such organ or tissue for the purpose of transplantation.

23-1826.

Organ and tissue donations; terms, defined.

For purposes of sections 23-1825 to 23-1832:

- (1) Coroner means a coroner or his or her designated representative;
- (2) Decedent means an individual with respect to whom a determination of death has been made pursuant to section 71-7202;
- (3) Donor has the definition found in section 71-4825; and
- (4) Preliminary investigation means an inquiry into whether any organs or tissues are necessary to determine the proximate cause or means of death.

23-1827.

Organ and tissue donations; preliminary investigation; access to information; release of organs or tissues; exception; presence for removal procedure.

- (1) A coroner shall conduct a preliminary investigation of a decedent within the coroner's jurisdiction as soon as possible after notification by the hospital in which such decedent is located or the hospital to which such decedent is being transported. The coroner may designate the coroner's physician or another physician to conduct the preliminary investigation.
- (2) The preliminary investigation shall be completed within a time period that is compatible with the preservation and recovery of organs or tissues for the purpose of transplantation.
- (3) The coroner may request and shall have access to all necessary information including copies of medical records, laboratory test results, X-rays, and other diagnostic results. The information shall be provided as expeditiously as possible, through reasonable means, to permit the

preliminary investigation to be completed within a time period compatible with the preservation and recovery of organs or tissues for the purpose of transplantation.

(4) Upon completion of the preliminary investigation, the coroner shall release all organs or tissues which have been donated or may yet be donated pursuant to the Revised Uniform Anatomical Gift Act except those that the coroner reasonably believes contain evidence of the proximate cause or means of death. If the coroner reasonably believes that a specific organ or tissue contains evidence of the proximate cause or means of death and the organ or tissue is otherwise subject to recovery as a donated organ or tissue pursuant to the Revised Uniform Anatomical Gift Act, the coroner or his or her designee shall be present for the removal procedure (a) to make a final determination that allows the recovery of the organs and tissues to proceed, (b) to request a biopsy, or (c) to deny removal of such organ or tissue if the coroner determines such organ or tissue contains evidence of the proximate cause or means of death. After a preliminary investigation is completed under this section, all organs or tissues compatible for transplantation, except any organs or tissues for which the coroner has denied recovery, may be recovered pursuant to the Revised Uniform Anatomical Gift Act.

Source

Laws 2008, LB246, § 3;

Laws 2010, LB1036, § 25.

Cross References

Revised Uniform Anatomical Gift Act, see sections 71-4824 to 71-4845

Applicability of act. The Revised Uniform Anatomical Gift Act applies to an anatomical gift or amendment to, revocation of, or refusal to make an anatomical gift, whenever made.

71-4831. Preclusive effect of anatomical gift, amendment, or revocation.

(a) Except as otherwise provided in subsection (g) of this section and subject to subsection (f) of this section, in the absence of an express, contrary indication by the donor, a person other than the donor is barred from making, amending, or revoking an anatomical gift of a donor's body or part if the donor made an anatomical gift of the donor's body or part under section 71-4828 or an amendment to an anatomical gift of the donor's body or part under section 71-4829.

71-4832. Who may make anatomical gift of decedent's body or part.

(a) Subject to subsections (b) and (c) of this section and unless barred by section 71-4830 or 71-4831, an anatomical gift of a decedent's body or part for purpose of transplantation, therapy, research, or education may be made by any member of the following classes of persons who is reasonably available, in the order of priority listed:

- (1) An agent of the decedent at the time of death who could have made an anatomical gift under subdivision (2) of section 71-4827 immediately before the decedent's death;
- (2) The spouse of the decedent;
- (3) Adult children of the decedent;
- (4) Parents of the decedent;
- (5) Adult siblings of the decedent;
- (6) Adult grandchildren of the decedent;
- (7) Grandparents of the decedent;
- (8) The persons who were acting as the guardians of the person of the decedent at the time of death;
- (9) An adult who exhibited special care and concern for the decedent other than any medical personnel caring for the decedent at the time of or immediately leading up to the decedent's death; and
- (10) Any other person having the authority to dispose of the decedent's body.

(b) If there is more than one member of a class listed in subdivision (a)(1), (3), (4), (5), (6), (7), or (8) of this section entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to which the gift may pass under section 71-4834 knows of an objection by another member of the class. If an objection is known, the gift may be made only by a majority of the members of the class who are reasonably available.

(c) A person may not make an anatomical gift if, at the time of the decedent's death, a person in a prior class under subsection (a) of this section is reasonably available to make or to object to the making of an anatomical gift.

71-4837.

Rights and duties of procurement organization and others.

(a) When a hospital refers an individual at or near death to a procurement organization, the organization shall make a reasonable search of the records of the Donor Registry of Nebraska established pursuant to section 71-4822 and any donor registry that it knows exists for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.

(b) A procurement organization must be allowed reasonable access to information in the records of the Donor Registry of Nebraska or any donor registry described in subsection (a) of this section to ascertain whether an individual at or near death is a donor.

(c) When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to determine the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor. During the examination period, measures necessary to ensure the medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent. Measures necessary to ensure the medical suitability of the part from a prospective donor may not be administered if it is determined that the administration of those measures would not provide the prospective donor with appropriate end-of-life care or it can be anticipated by reasonable medical judgment that such measures would cause the prospective donor's death other than by the prospective donor's underlying pathology.

(d) Unless prohibited by law other than the Revised Uniform Anatomical Gift Act, at any time after a donor's death, the person to which a part passes under section 71-4834 may conduct any reasonable examination necessary to determine the medical suitability of the body or part for its intended purpose.

(e) Unless prohibited by law other than the act, an examination under subsection (c) or (d) of this section may include an examination of all medical and dental records of the donor or prospective donor.

(f) Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.

(g) Upon referral by a hospital under subsection (a) of this section, a procurement organization shall make a reasonable search for any person listed in section 71-4832 having priority to make or object to the making of an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information.

(h) Subject to subsection (i) of section 71-4834 and sections 23-1825 to 23-1832, the rights of the person to which a part passes under section 71-4834 are superior to the rights of all others with respect to the part. The person may accept or reject an anatomical gift in whole or in part. Subject to the terms of the document of gift and the act, a person that accepts an anatomical gift of an entire body may allow embalming, burial or cremation, and use of remains in a funeral service. If the gift is of a part, the person to which the part passes under section 71-4834, upon the death of the donor and before embalming, burial, or cremation, shall cause the part to be removed without unnecessary mutilation.

71-4843. Effect of anatomical gift on advance health care directive.

(a) For purposes of 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 life-sustaining treatment may be withheld or withdrawn from the prospective donor; and

(3) Health care decision means any decision 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 a part for transplantation or therapy, 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 the Revised Uniform Anatomical Gift 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 71-4832. Before resolution of the conflict, measures necessary to ensure the medical suitability of the part from a prospective donor may not be administered if it is determined that the administration of those measures would not provide the prospective donor with appropriate end-of-life care or it can be anticipated by reasonable medical judgment that such measures would cause the prospective donor's death other than by the prospective donor's underlying pathology. If the conflict is not resolved expeditiously, the direction of the declaration or advanced directive controls.

Adopted: May 16, 2018