



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2005 Senate Bill 441	Senate Substitute Amendment 1
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CURRENT LAW

Current law allows a person to make an anatomical gift by signing what is referred to in the law as a “document of gift.” In addition, certain persons listed in the statutes in order of priority are permitted to make a document of gift for a deceased person unless the deceased person has, at the time of death, made an unrevoked refusal to make an anatomical gift. The priority list in the statutes is as follows: (1) spouse; (2) adult son or daughter; (3) parent; (4) adult brother or sister; (5) grandparent; (6) guardian of the person; and (7) health care agent.

SENATE SUBSTITUTE AMENDMENT 1

Removal of Organs and Tissue

Senate Substitute Amendment 1 states that for a deceased person who is within the jurisdiction of a coroner or medical examiner, any vascularized organ that is an anatomical gift may be removed by a physician, within a time period compatible with preservation of the organ for transplantation if two conditions are met. First, immediately after the hospital in which the person is located contacts the organ procurement organization (OPO) for the region of which the hospital is a part concerning the potential donation, the OPO must, by oral conversation, provide notice to the coroner or medical examiner or his or her designee of the referral of the person and must provide notice of the referral to the district attorney or his or her designee. Second, the coroner or medical examiner or his or her designee must have the opportunity to be present during the scheduled removal of the vascularized organ if, in the judgment of the coroner, medical examiner, or designee, the organ may be necessary in determining the cause of death.

If in the judgment of the coroner, medical examiner, or designee, the vascularized organ may be necessary in determining the cause of death, he or she may order a biopsy of the organ or if the coroner, medical examiner, or designee is present during the scheduled removal, he or she may deny removal of

the organ. If denial of removal is a possibility, the OPO must make a good-faith effort to consult with a forensic pathologist designated by the coroner, medical examiner, or designee as to the pathologist's opinion concerning the necessity of the organ in determining the cause of death. If the biopsy is ordered or the removal is denied, the coroner, medical examiner, or designee must specify in writing as part of any required death report any reasons for determining that the organ may be involved in the cause of death.

For a deceased person who is within the jurisdiction of a coroner or medical examiner, any part other than a vascularized organ that is an anatomical gift may be removed by a physician and any part that is a tissue or bone may be removed by a technician or tissue bank employee, within a time period compatible with preservation of the part for purposes of transplantation.

A physician, technician, or tissue bank employee who removes cardiovascular tissue from a deceased person for whom an anatomical gift has been made and who is within the jurisdiction of a coroner or medical examiner must, upon the request of the coroner or medical examiner, file with that person a report detailing the condition of the cardiovascular tissue and its relationship to the cause of death. The report may include a biopsy or medically approved sample, if available, from the tissue.

The substitute amendment requires the Department of Health and Family Services (DHFS) to promulgate a rule that prescribes a form for removal of organs by a physician from a deceased person who is within the jurisdiction of a coroner or medical examiner. DHFS is also required to promulgate a rule that prescribes a form for the removal of tissue, other than cardiovascular tissue, from a deceased person who is within the jurisdiction of a coroner or medical examiner. After removal, the physician, technician, or tissue bank employee must transmit the form to the coroner or medical examiner with jurisdiction over the deceased person. DHFS is required to appoint an advisory committee that includes coroners, forensic pathologists, medical examiners, OPO personnel, tissue banks, and district attorneys, to assist in prescribing these forms. DHFS is authorized to use the emergency rule-making procedure in promulgating these rules and the rules must be promulgated by the first day of the fourth month beginning after the effective date of the substitute amendment.

Selection of Tissue Banks

Senate Substitute Amendment 1 provides that if a deceased person is within the custody of a coroner or medical examiner, and the death occurred in a hospital, any release of the deceased person for potential donation of tissue must be to the tissue bank with which the hospital has an agreement under federal regulations. However, if that tissue bank is unwilling to receive the tissue donation, it must notify the coroner or medical examiner of this. Upon receipt of such a notification, the coroner or medical examiner may notify any other tissue bank with which he or she has an agreement regarding the availability of the deceased person as a potential tissue donor. Upon receiving this notification, that tissue bank, if it is willing to receive the tissue donation, must contact an available person on the statutory priority list (i.e., a relative, guardian, or health care agent) to request that person to make an anatomical gift of all or part of the tissue. If the coroner or medical examiner informs the hospital that the notifications have been made and that consent has been given for an anatomical gift, the hospital must transfer the deceased person to the coroner or medical examiner.

The substitute amendment further provides that when a deceased person is within the custody of a coroner or medical examiner, the death occurred outside a hospital or the deceased person was

transferred to the coroner or medical examiner as described in the previous paragraph, and the coroner or medical examiner refers the deceased person as a potential tissue donor, the referral must be made under the following conditions:

- The coroner or medical examiner, after considering a tissue bank's history, services, traditional referral patterns, geographic service area, and tissue distribution record, and any other criteria required for consideration by the corporation counsel, enters into a written, general referral agreement with one or more tissue banks to which the coroner or medical examiner will refer deceased persons for potential donation of tissue.
- Any such agreement is subject to review and approval by the corporation counsel. In addition, any such agreement is subject to review and approval by the county board of the applicable county. Within 60 days after approval by the corporation counsel and transmittal of the agreement to the county board, the county board may approve or disapprove the agreement. If it takes no action, the agreement is approved.
- Such a tissue bank must be one that is accredited by the American Association of Tissue Banks or audited at least once every two years by an organization that is accredited by the American Association of Tissue Banks.

Any agreement that is entered into after the effective date of the substitute amendment must conform to the above requirements. In addition, any agreement that exists on the effective date of the substitute amendment must conform to those requirements by October 1, 2007 (unless it expires before that date and is not negotiated or renewed).

Legislative History

On January 18, 2006, the Senate Committee on Health, Children, Families, Aging and Long Term Care recommended adoption of Senate Substitute Amendment 1, and passage of the bill as amended, both by votes of Ayes, 5; Noes, 0.

RNS:wu:jal