

INS X

* an anatomical gift of the decedent's body or part has been made or that

20 B

SECTION 1. 157.06 (4) of the statutes is amended to read:

157.06 (4) AUTHORIZATION BY CORONER OR MEDICAL EXAMINER; NO EVIDENCE OF ANATOMICAL GIFT. (ag) If a decedent is within the custody of a coroner or medical examiner and if there is no evidence that the decedent has made or refused to make an anatomical gift, the coroner or medical examiner shall contact by telephone the organ procurement organization designated for the region in which the death occurs. The coroner or medical examiner shall provide the organ procurement organization with information, if known to the coroner or medical examiner, concerning the decedent's age, the cause of the decedent's death and, if available, the decedent's medical history.

(am) The coroner or medical examiner may release and permit the removal of a part from a decedent specified in par. (ag) within that official's custody, for transplantation or therapy, including to a tissue bank under the requirements of sub.

(22)

(4r), if all of the following apply:

1. The official has received a request for the part of the body from a hospital, physician, or organ procurement organization.

2. The official has made a reasonable effort, taking into account the useful life of the part of the body, to locate and examine the decedent's medical records and, subject to sub. (6m), inform individuals listed in sub. (3) (a) of their option to make, or object to making, an anatomical gift.

(23)

to make an anatomical gift (8)

3. The official does not know of a refusal or contrary indication by the decedent or of an objection by an individual having priority to act as listed in sub. (3) (a).

persons
a person

have actual knowledge

(8)

- 4. The removal will be by a physician, except for the following:
 - a. In the case of eyes, the removal may be by a physician or by an enucleator.
 - b. In the case of tissue or bone, the removal may be by a physician or by a technician.
- 5. The removal will not interfere with any autopsy or investigation.
- 6. The removal will be in accordance with accepted medical standards.
- 7. Cosmetic restoration will be done to the decedent's body, if appropriate.

(b) A coroner or medical examiner who releases, and permits the removal of a part of, a human body under this subsection shall maintain a permanent record of the name of the decedent, the name of the person making the request, the date and purpose of the request, the part of the body requested, and the name of the person to whom it was released.

History: 1971 c. 40 s. 93; 1971 c. 213 s. 5; 1977 c. 46, 124; 1979 c. 175 s. 53; 1979 c. 221 s. 2202 (45); 1981 c. 20, 290; 1983 a. 485; 1985 a. 286, 315; 1985 a. 316 s. 14; Stats. 1985 s. 157.06; 1989 a. 105; 1989 a. 298 ss. 3, 10m, 11m; 1991 a. 32; 1995 a. 27 s. 9126 (19); 1997 a. 52, 206, 305; 1999 a. 83; 2001 a. 103; 2005 a. 229, 230.

SECTION 2. 157.06 (4m) of the statutes is amended to read:

21

157.06 (4m) AUTHORIZATION BY CORONER OR MEDICAL EXAMINER; POTENTIAL DONATIONS OF ORGANS AND TISSUE. (a) Subject to par. (b), for a decedent who meets the criteria for a determination of death under s. 146.71, who is a donor or of whom an anatomical gift has been made under sub. (3), and who is within the jurisdiction of a coroner or medical examiner under ch. 979, any vascularized organ that is ^{the subject of} an anatomical gift may be removed by a physician, within a time period compatible with preservation of the organ for purposes of transplantation, if all of the following take place:

- 1. Immediately after the hospital in which the donor, ^{or} potential ^{donor} ~~decedent~~, or ~~decedent~~ is located contacts the organ procurement organization designated for the region of which the hospital is a part concerning the potential donation, the organ

9) **** NOTE: Should reference to purposes of transplantation be for purposes of transplantation or therapy? This also applies to par. (c).

procurement organization shall, by oral conversation, provide notice to the coroner or medical examiner or his or her designee of the referral of the donor, ^{for} potential decedent, or decedent and shall provide notice of the referral to the district attorney or his or her designee.

donor

2. The coroner or medical examiner or his or her designee has 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.

(b) If, in the judgment of the coroner, medical examiner, or designee specified in par. (a) the vascularized organ may be necessary in determining the cause of death, the coroner, medical examiner, or designee may order a biopsy of the vascularized organ or, if the coroner, medical examiner, or designee is present during the scheduled removal, he or she may deny removal of the vascularized organ. If denial of removal is a possibility, the organ procurement organization shall 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 vascularized organ in determining the cause of death. If the biopsy is ordered or the removal is denied, the coroner, medical examiner, or designee shall specify, in writing as part of any death report required under ch. 979, any reasons for determining that the vascularized organ may be involved in the cause of death.

Remove by path Keep space

(c) For a decedent specified under par. (a), as authorized under the requirements of this section by the coroner, medical examiner, or designee with jurisdiction over the decedent, any part other than a vascularized organ that is an anatomical gift may be removed by a physician and any part that is tissue or bone

a subject of

may be removed by a technician or tissue bank employee, within a time period compatible with preservation of the part for purposes of transplantation.

(d) A physician, technician, or tissue bank employee who removes cardiovascular tissue from a decedent under this subsection shall, upon request of the coroner or medical examiner, file with the coroner or medical examiner with jurisdiction over the decedent 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 part.

(e) 1. A physician who removes an organ from a decedent under this subsection shall complete a form, as specified in sub. (9m) (a). (24)

2. A physician, technician, or tissue bank employee who removes tissue, other than cardiovascular tissue, from a decedent under this subsection shall complete a form, as specified in sub. (9m) (b). (24)

3. After completing a form under this paragraph, the physician, technician, or tissue bank employee shall transmit the form to the coroner or medical examiner with jurisdiction over the decedent.

Cross Reference: Cross Reference: See also ch. HFS 137, Wis. adm. code. **Cross Reference:**

History: 1971 c. 40 s. 93; 1971 c. 213 s. 5; 1977 c. 46, 124; 1979 c. 175 s. 53; 1979 c. 221 s. 2202 (45); 1981 c. 20, 290; 1983 a. 485; 1985 a. 286, 315; 1985 a. 316 s. 14; Stats. 1985 s. 157.06; 1989 a. 105; 1989 a. 298 ss. 3, 10m, 11m; 1991 a. 32; 1995 a. 27 s. 9126 (19); 1997 a. 52, 206, 305; 1999 a. 83; 2001 a. 103; 2005 a. 229, 230.

SECTION 3. 157.06 (4r) of the statutes is amended to read:

157.06 (4r) AUTHORIZATION BY CORONER OR MEDICAL EXAMINER; TISSUE BANKS. (a)

1. If a decedent is within the custody of a coroner or medical examiner, and the death occurred in a hospital, any release of the decedent for potential donation of tissue shall be to the tissue bank with which the hospital has an agreement under 42 CFR 482.45 (a) (2). However, if such a tissue bank is unwilling to receive the tissue donation, the tissue bank shall so notify the coroner or medical examiner.

22 (B)

2. Upon receipt of a notification under subd. 1., the coroner or medical examiner may notify any other tissue bank with which the coroner or medical examiner has an agreement under par. (b) of the availability of the decedent as a potential tissue donor.

3. Upon receipt of a notification under subd. 2., the tissue bank so notified, if willing to receive the tissue donation, shall contact ⁽⁸⁾ an available individual, under the priority established in sub. (3) (a), to request that the individual make an anatomical gift of all or a part of the decedent's tissue.

Handwritten notes: "a reasonably" above "an available individual", "person" below "individual", and "(8)" above "an available individual".

4. If the coroner or medical examiner informs the hospital that subds. 2. and 3. apply and that consent has been given for an anatomical gift, the hospital shall transfer the decedent to the coroner or medical examiner.

(b) When a decedent is within the custody of a coroner or medical examiner, the death occurred outside a hospital or the decedent was transferred to the coroner or medical examiner under par. (a) 4., and the coroner or medical examiner refers the decedent as a potential tissue donor, any such referral shall be made under the following conditions:

1. Subject to subds. 2., 3., and 4., 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 of the applicable county, enters into a written, general referral agreement with one or more tissue banks to which the coroner or medical examiner shall refer decedents for potential donation of tissue.

2. Any agreement under subd. 1. is subject to review and approval by all of the the following:

a. The corporation counsel of the applicable county.

b. The county board of the applicable county. Within 60 days after any approval by the corporation counsel and transmittal of the agreement to the county board, the county board may approve or disapprove the agreement. If the county board takes no action, the agreement is approved.

3. A tissue bank under this paragraph is accredited by the American Association of Tissue Banks or audited at least once every 2 years by an organization that is accredited by the American Association of Tissue Banks.

4. All of the following applies to an agreement by a coroner or medical examiner with one or more tissue banks to which the coroner or medical examiner refers decedents for potential donation of tissue:

a. Any such agreement that is entered into after April 13, 2006, shall conform to the requirements of subds. 1. to 3.

b. Any such agreement that exists on April 13, 2006, shall conform to the requirements of subds. 1. to 3. by October 1, 2007, unless the agreement expires before that date and is not renegotiated or renewed under subd. 4. a.

History: 1971 c. 40 s. 93; 1971 c. 213 s. 5; 1977 c. 46, 124; 1979 c. 175 s. 53; 1979 c. 221 s. 2202 (45); 1981 c. 20, 290; 1983 a. 485; 1985 a. 286, 315; 1985 a. 316 s. 14; Stats. 1985 s. 157.06; 1989 a. 105; 1989 a. 298 ss. 3, 10m, 11m; 1991 a. 32; 1995 a. 27 s. 9126 (19); 1997 a. 52, 206, 305; 1999 a. 83; 2001 a. 103; 2005 a. 229, 230.

SECTION 4. 157.06 (6m) of the statutes is amended to read:

157.06 (6m) CONSENT FOR OR LIMITATION ON CERTAIN USES OF BONES OR TISSUE;

REQUIREMENTS. (a) A hospital, organ procurement organization, tissue bank, coroner, or medical examiner that provides a document of gift to a potential donor or to an

individual under sub. (3) (a) shall include in the document of gift the following

sentences: "I understand that donated bones or tissues, including skin, may have numerous uses, including for reconstructive and cosmetic purposes, and that multiple organizations, including nonprofit and for-profit organizations, may

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person who may make an anatomical gift

record

or (8)

record

recover, process, or distribute the donations. I further understand that I may, by this document, limit the use of the bones or tissues, including skin, that are donated or types of organizations that recover, process, or distribute the donation."

(b) The document of gift under par. (a) shall include, following the 2nd sentence required in par. (a), all of the following:

1. A line or space for the donor or individual under sub. (3) (a) to sign or initial to acknowledge that he or she has read the sentences specified in par. (a) or that the sentences have been read aloud to him or her. Except as provided in sub. (3) (c) 2.

c., failure of the donor or individual to place his or her initials or signature in the line or space is a refusal to make an anatomical gift of bones or tissues.

2. A line or space for the donor or individual under sub. (3) (a) to sign or initial and specify a limitation, if any, on the use of bones or tissues or on the types of organizations that recover, process, or distribute the donation.

(d) If a potential donor or individual makes an anatomical gift under this subsection, the hospital, organ procurement organization, tissue bank, coroner, or medical examiner that provides to the donor or individual a document of gift under par. (a) shall also provide the donor or individual with the telephone number and address of the agency or organization that recovers the anatomical gift.

(e) The requester under par. (a) shall provide the donor or the individual under sub. (3) (a), as applicable, with a copy of any document of gift executed under the requirements of this subsection.

History: 1971 c. 40 s. 93; 1971 c. 213 s. 5; 1977 c. 46, 124; 1979 c. 175 s. 53; 1979 c. 221 s. 2202 (45); 1981 c. 20, 290; 1983 a. 485; 1985 a. 286, 315; 1985 a. 316 s. 14; Stats. 1985 s. 157.06; 1989 a. 105; 1989 a. 298 ss. 3, 10m, 11m; 1991 a. 32; 1995 a. 27 s. 9126 (19); 1997 a. 52, 206, 305; 1999 a. 83; 2001 a. 103; 2005 a. 229, 230.

SECTION 5. 157.06 (9m) of the statutes is amended to read:

In cases in which an anatomical gift is executed by means that do not require the person making the anatomical gift to sign a gift record

or an objection to making

or (8)

record

record

person who may make an anatomical gift

person making the anatomical gift to sign

a person who may make an anatomical gift under Sub. (3) or (8)

person who may make an anatomical gift

record

24 B
 157.06 (9m) FORMS FOR REMOVAL OF ORGANS AND CERTAIN TISSUES; RULES. The department of health and family services shall promulgate rules prescribing all of the following:

(a) A form for removal of organs for use under sub. (4m) (e) 1. and 3. (21)

(b) A form for removal of tissue, other than cardiovascular tissue, for use under sub. (4m) (e) 2. and 3. (21) or (c)

~~Cross Reference: Cross Reference: See also ch. HFS 137, Wis. adm. code. Cross Reference~~

~~History: 1971 c. 40 s. 93; 1971 c. 213 s. 5; 1977 c. 46, 124; 1979 c. 175 s. 53; 1979 c. 221 s. 2202 (45); 1981 c. 20, 290; 1983 a. 485; 1985 a. 286, 315; 1985 a. 316 s. 14; Stats. 1985 s. 157.06; 1989 a. 105; 1989 a. 298 ss. 3, 10m, 11m; 1991 a. 32; 1995 a. 27 s. 9126 (19); 1997 a. 52, 206, 305; 1999 a. 83; 2001 a. 103; 2005 a. 229, 230.~~

SECTION 6. 157.06 (10m) of the statutes is amended to read:

25 B
 157.06 (10m) PENALTY. Whoever fails to comply with the requirement to provide sentences under sub. (3) (c) 2. b. or sub. (6m) (a) may be subject to a forfeiture of not less than \$500 nor more than \$1,000 for each violation. (23)

~~History: 1971 c. 40 s. 93; 1971 c. 213 s. 5; 1977 c. 46, 124; 1979 c. 175 s. 53; 1979 c. 221 s. 2202 (45); 1981 c. 20, 290; 1983 a. 485; 1985 a. 286, 315; 1985 a. 316 s. 14; Stats. 1985 s. 157.06; 1989 a. 105; 1989 a. 298 ss. 3, 10m, 11m; 1991 a. 32; 1995 a. 27 s. 9126 (19); 1997 a. 52, 206, 305; 1999 a. 83; 2001 a. 103; 2005 a. 229, 230.~~

SECTION 7. 157.06 (11m) of the statutes is amended to read:

26 B
 157.06 (11m) EFFECT OF PRIOR DOCUMENT OF GIFT. Notwithstanding the requirements of this section, a document of gift that was made under the requirements of s. 157.06, 1987 stats., is deemed to comply with the requirements of this section.

~~History: 1971 c. 40 s. 93; 1971 c. 213 s. 5; 1977 c. 46, 124; 1979 c. 175 s. 53; 1979 c. 221 s. 2202 (45); 1981 c. 20, 290; 1983 a. 485; 1985 a. 286, 315; 1985 a. 316 s. 14; Stats. 1985 s. 157.06; 1989 a. 105; 1989 a. 298 ss. 3, 10m, 11m; 1991 a. 32; 1995 a. 27 s. 9126 (19); 1997 a. 52, 206, 305; 1999 a. 83; 2001 a. 103; 2005 a. 229, 230.~~

or s. 157.06, 2005 stats. ✓

<end INS X>

**2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1835/rains
RLR:.....

1 **D-Note insert:**

Participants at the March 14, 2007, meeting requested that the bill retain current law on mandatory referrals (specifically current law s. 157.06 (5)) rather than relying, as UAGA does, on federal law governing referrals. Would you consider instead codifying federal law, specifically 42 CFR 482.45? Federal law requires that hospitals refer all deaths and imminent deaths to an OPO. Current law s. 157.06 (5) (b) 1. provides that a hospital may either directly contact persons who may make a gift of a decedent's body or parts or alternatively that the hospital may refer the case to the OPO to make contact. Allowing the hospital to make contact without going through the OPO appears, at least on its face, to conflict with the federal requirement.

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3 **Ins 3-8:**

****NOTE: Should a principal be able to exclude a health care agent from making an anatomical gift of the principal's body or part by means other than making a refusal to make an anatomical gift. For example, might not a person designate one person as a general health care agent, but give a different agent authority to make decisions regarding anatomical gifts. This seems to be what is contemplated under UAGA section 4 (2).

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5 **Ins 5-17:**

****NOTE: Do you want to call this section "Anatomical gifts" or "Revised uniform Anatomical Gift Act"?

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7 **Ins 6-11:**

****NOTE: Please review my changes to the definition of "disinterested witness". I assume the definition is supposed to exclude rather than include a person who exhibited special care and concern.

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9 **Ins 7-11:**

****NOTE: The bill defines a hospital as a facility "approved" rather than "licensed" under s. 50.35 so it better matches the language in s. 50.35. The current law definition in s. 157.06 (1) (f) uses the term "approved."

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11 **Ins 9-17:**

1 (zm) "Vascularized organ" means a heart, lung, liver, pancreas, kidney,
2 intestine, or other organ that requires the continuous circulation of blood to remain
3 useful for purposes of transplantation.

History: 1971 c. 40 s. 93; 1971 c. 213 s. 5; 1977 c. 46, 124; 1979 c. 175 s. 53; 1979 c. 221 s. 2202 (45); 1981 c. 20, 290; 1983 a. 485; 1985 a. 286, 315; 1985 a. 316 s. 14; Stats. 1985 s. 157.06; 1989 a. 105; 1989 a. 298 ss. 3, 10m, 11m; 1991 a. 32; 1995 a. 27 s. 9126 (19); 1997 a. 52, 206, 305; 1999 a. 83; 2001 a. 103; 2005 a. 229, 230.

****NOTE: UAGA does not use the term "vascularized organ." I retained the current law definition of "vascularized organ" because the term is used in sub. (21), which is current law s. 157.06 (4m).

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Ins 11-5:

****NOTE: Do you want to state that a person may make a gift by "affixing" a symbol to a license or identification card to better cover gifts made by placing an organ donor sticker on the license or identification card? Do you want to provide that an individual may make a gift by imprinting or affixing a statement or symbol himself or herself, not just by authorizing another to do so?

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Ins 18-12:

****NOTE: Since "reasonably available" is defined, I deleted the phrase "to make or object to the making of an anatomical gift" after "reasonably available."

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Ins 22-2:

****NOTE: Par. (c) refers to a gift of "one or more specific parts or all parts" and par. (d) refers to a gift of "one or more specific parts." Should there be any distinction? Why not just refer to a gift "of a part." In the statutes, use of the singular also covers plural.

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Ins 22-6:

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(f) If pars. (b), (c) 1., (d), or (e) applies, all of the following apply:

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1. If the part is an eye, the part passes to the appropriate eye bank.

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2. If the part is tissue, the part passes to the appropriate tissue bank.

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3. If the part is an organ, the part passes to to the appropriate organ

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procurement organization as custodian of the organ.

****NOTE: Rather than stating in a separate paragraph that an OPO receives an organ only as custodian, this bill specifies custodian status in subd. 3.

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Ins 23-2:

****NOTE: Throughout this subsection UAGA refers to a gift that is made in a "record of gift." There is no requirement that a gift made orally under sub. (4) (a) 3. be reduced to a record. Do you want to require that all gifts be reduced to a record? Should this subsection just refer to "an anatomical gift" rather than "an anatomical gift that is made in a record of gift"?



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Ins 24-3:

****NOTE: Rather than referring to a "person who is authorized to make or object to the making of an anatomical gift," should this paragraph instead make a more specific reference to a person under sub. (8) (a)? If not, do you want to also provide that a person who is authorized to revoke a gift should be provided access to the record?

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Ins 24-16:

no 9 Should this paragraph refer to all refusals, not just those made in a signed record?

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Ins 27-8:

revocations

****NOTE: Should the penalty apply to concealing or falsely reporting a gift, amendment, or refusal that is made orally?

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Ins 28-4:

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(b) If a record of gift is valid under this subsection, the law of this state governs the interpretation of the record of gift.

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(c) A person may presume that a record of gift or an amendment of a record of gift is valid unless the person has actual knowledge that it was not validly executed or was revoked.

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****NOTE: Should this subsection also address gifts that are made orally?

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Ins 28-17:

****NOTE: In addition to addressing cases in which a prospective donor executed a declaration or a power of attorney for health care, shouldn't this subsection also state a

general rule that measures necessary to ensure the medical suitability of an organ for transplantation may not be withheld from a prospective donor. As written, such measures are not required if the prospective donor did not execute a declaration or a power of attorney.

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Ins 36-14: ✓

SECTION 1. 343.175 (2) (title) of the statutes is amended to read:

343.175 (2) (title) ~~DOCUMENT~~ RECORD OF GIFT OR REFUSAL.

History: 1989 a. 105, 298; 1995 a. 446; 2003 a. 33.

Ins 37-2: ✓

SECTION 2. 343.175 (3) (a) of the statutes is renumbered 343.175 (3).

SECTION 3. 343.175 (3) (b) of the statutes is repealed.

****NOTE: Please review the repeal of s. 343.175 (3) (b), which provides that use of an organ donor sticker alone does not constitute a valid gift.

Ins 38-8: ✓

SECTION 4. 343.50 (8) (b) of the statutes is amended to read:

343.50 (8) (b) The department may not disclose any record or other information concerning or relating to an applicant or identification card holder to any person other than a court, district attorney, county corporation counsel, city, village or town attorney, law enforcement agency, a procurement organization as provided in sub. (4m) (a), the applicant or identification card holder or, if the applicant or identification card holder is under 18 years of age, his or her parent or guardian. Except for photographs disclosed to a law enforcement agency under s. 343.237, persons entitled to receive any record or other information under this paragraph shall not disclose the record or other information to other persons or agencies. This paragraph does not prohibit the disclosure of a person's name or address, of the name

1 or address of a person's employer or of financial information that relates to a person
2 when requested under s. 49.22 (2m) by the department of workforce development or
3 a county child support agency under s. 59.53 (5).

History: 1977 c. 360, 447; 1979 c. 226, 306; 1981 c. 20 s. 1848r; 1985 a. 29, 98; 1987 a. 27, 304; 1989 a. 105, 294, 298; 1991 a. 86, 269; 1995 a. 446; 1997 a. 27, 119, 191; 1999 a. 9, 32, 80, 85, 88, 186; 2001 a. 93; 2003 a. 33; 2005 a. 126.

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5 **Ins CS7:**

6 (c) If a person makes anatomical gift in the manner provided in sub. (9) (a) 2.
7 or 3., the individual receiving the oral communication shall read aloud to the person,
8 the sentences required under par. (a). If the anatomical gift is made in the manner
9 provided in sub. (9) (a) 3., the individual who reduces the anatomical gift to a record
10 shall note on the record that the person making the anatomical gift has been read
11 the sentences required under par. (a) and note any limitations that the person gift
12 imposes on the use of any bones or tissues that are the subject of the anatomical gift
13 or any limitations on the types of organizations that recover, process, or distribute
14 such bones or tissues.

***NOTE: Paragraph (c) is the material from current law s. 157.06 (3) (c) 2. c.

making
the
anatomical
gift

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1835/P1dn

RLR:.....

cs

Most of my questions are in ^{CS}****Notes in the draft.

A request was made at the meeting on March 14, 2007 to maintain the mandatory request language under current law s. 157.06 (5). Which portions of that subsection do you want to retain?

D-note insert

Robin Ryan
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**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1835/P1dn
RLR:cjs:nwn

May 11, 2007

Most of my questions are in ****NOTES in the draft.

Participants at the March 14, 2007, meeting requested that the bill retain current law on mandatory referrals (specifically current law s. 157.06 (5)) rather than relying, as UAGA does, on federal law governing referrals. Would you consider instead codifying federal law, specifically 42 CFR 482.45? Federal law requires that hospitals refer all deaths and imminent deaths to an OPO. Current law s. 157.06 (5) (b) 1. provides that a hospital may either directly contact persons who may make a gift of a decedent's body or parts or alternatively that the hospital may refer the case to the OPO to make contact. Allowing the hospital to make contact without going through the OPO appears, at least on its face, to conflict with the federal requirement.

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Ryan, Robin

From: Maroney Lisa A. [LMaroney@uwhealth.org]
Sent: Wednesday, June 13, 2007 11:30 AM
To: Becher, Scott; Tuschen, Terry; Ryan, Robin
Cc: Miller Robert D.
Subject: UAGA
Importance: High
Attachments: UAGA - final 06-13-07.doc

Robin, Terry and Scott,

Attached please find our legal counsel's comments to questions Robin raised in the draft. I think his memo covers everything. Robin, if you have questions about any of his comments, please feel free to contact Bob Miller at 2-6735. Thanks.

We'd like one more chance to review the draft before it's circulated for co-sponsorship.

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REVIEW OF PRELIMINARY DRAFT OF
UNIFORM ANATOMICAL GIFT ACT BILL
LRB-1835/P1

June 13, 2007

We urge the drafter to number and letter the subsections and subsubsections the same as the numbering and lettering of UAGA to facilitate uniform interpretation and reference. In other words, skip letters and numbers when the counterpart is omitted and use combinations of numbers and letters when there is no counterpart. We have not repeated this recommendation is the following.

We note that this bill does not yet include mandatory referral. We support the drafter's suggestion of addressing this by codifying 42 CFR 482.45.

Note that the changes we are recommending to the draft are in:

- p. 6 at notes #3, #4 & #5;
- p. 11 at note #2;
- p. 11 at note #3 and p. 19 at comment #1;
- p. 12 at note #1;
- p. 16 at note #2;
- p. 21 at note #2;
- p. 22 at notes #2 & #3;
- p. 24 at notes #1 & #2;
- p. 25 at note #1;
- p. 26 at notes #1 & #3;
- p. 27 at notes #2 & #5;
- p. 28 at note #1;
- p. 29 at note #1 & #2;
- p. 32 at note #1.

Cover letter - We support codifying 42 CFR 482.45.

- ✓ p.2 - It is not necessary to change section 146.31.
- p.3 - We support adding to 155.20(8) - "or the principal made an unrevoked designation in writing of a different agent to make decisions regarding anatomical gifts."
- ✓ p. 5 - We do not care how it is labeled. However, it is probably better to just keep it as "Anatomical Gifts," since there have been many changes from the revised uniform anatomical gift act.
- p. 6 -

- ✓ #1 - The definition of "agent" is acceptable.
- ✓ #2 - In an effort to try to keep as much of the UAGA as possible, it is acceptable to remove the cross-reference to the statutory definition of death in "anatomical gift." That definition will continue to apply without the cross-reference.
- ✓ #3-4 - We recommend that the existing definition of "decedent" in Wisconsin Statutes [157.06(1)(b)] be maintained - namely:

"Decedent" means a deceased individual.

- ✓ #5 - We are concerned that the phrase "exhibits special care and concern" could be misinterpreted to include health care providers, so we recommend inserting after "concern" the following ", except as a compensated health care provider,".

- ✓ #6 - It is acceptable to substitute "record of gift."

presumably make same change on p. 19.

p. 7 -

- ✓ #1 - The section on "guardian" is acceptable as drafted. Guardian should not include guardian of the estate.
- ✓ #2 - The section on "hospital" is acceptable as drafted.
- ✓ #3 - It is acceptable to delete the definition of "know."
- ✓ #4 - It is acceptable to rely on the definition of "minor" in 990.01(20).

p. 8 -

- ✓ #1 - It is acceptable to use the definition of parent in s. 48.02(13).
- ✓ #2 - It is acceptable to delete the definition of "person."
- ✓ #3 - It is acceptable to delete the definition of "recipient."

p. 9 -

- ✓ #1 - The definition of "record of gift" is acceptable.
- ✓ #2 - The definition of "record of refusal" is acceptable.
- ✓ #3 - The definition of "sign" is acceptable.
- ✓ #4 - It is acceptable to delete the definition of "state."

- ✓ #5 - We recommend retaining the definition of "technician" from the uniform act. It is important to keep the flexibility built into this definition.

p. 10 -

- ✓ #1 - We recommend that the wording of the uniform act be retained. This will facilitate uniform interpretation. We do not think that there is sufficient risk of misinterpretation to justify changing it.
- ✓ #2 - We agree that the definition of vascularized organ needs to be retained.
- ✓ #3 - We agree with adding the section on "signing for a person who is physically unable."

p. 11 -

- ✓ #1 - We have no objection.
- ✓ #2 - 54.46(2)(b) of existing law gives the POA the priority for healthcare decisions unless a court designates otherwise when appointing the guardian. We recommend that this priority be retained. This could be accomplished by inserting the following at the end of (3)(d) -

", unless there is an agent of the donor with authority to make a donation."

- #3 - We support inserting the proposed wording into section 157.06(9).

p. 12 -

- ✓ #1 - We support expanding the section to permit self-action in affixing. This could be accomplished by replacing (1) with:

1. Affixing a statement or symbol on the donor's driver's license or identification card a statement or symbol that indicates that the donor has made an anatomical gift or authorizing a person to imprint such a statement or symbol.

p. 13 -

- ✓ #1 - We support the changes to (4)(b) to (d).

p. 15 -

- ✓ #1 - We have no objection to the changes to (5).

p. 16 -

✓ #1 - We support the changes to (6).

✓ #2 - We support the proposed changes to (7).

✓ p. 17 #1 and p. 18 #1- We recommend that (e) and (f) be kept as drafted. We think that they will work without further change.

p. 18 -

✓ #2 - We support the change in the draft.

p. 19 -

✓ #1 - We recommend that subd. 10 be kept as in the draft to preserve the flexibility to encompass anyone with this authority. It is possible that non-statutory authority can exist so we recommend that it not be limited to enumerated statutes.

✓ #2 - The rewrite of (b) is acceptable.

✓ #3- The rewrite of 9C0 is acceptable.

Comment #1 - We recommending inserting in section 157.06(9) the new provision that the drafter proposed in the note #3 on page 11.

p. 20 -

✓ #1 - The restructuring of (d) is acceptable.

p. 21 -

#1 - The purpose of (a) is to tighten up who a gift may be given to preclude designated gifts for transplantation except to named individual recipients.

✓ #2 - We support deleting "named in the record of gift."

✓ #3 - See note # 5 - We support (a)(1) as revised.

✓ #4 - We support (a)(2) as revised.

✗ #5 - We support (a)(4), but recommend that the following be added. ", and may include authorization to transfer donated tissue that is unsuitable for transplantation or therapy to an appropriate institution or person for research or education."

belongs elsewhere

p. 22 -

✓ #1 - We support (c)(2) as drafted without further change. We recommend that it not be replaced with a reference to (f) since the use of "custodian" wording in (f) implies it is focused on transplantation.

— #2 - We interpret (c)(3) as rewritten to apply to parts of bodies that are donated, even when the whole body is donated, so that we do not think it is necessary to change it to address donations of the whole body. If the drafter disagrees, then we recommend that in (c)(3) "part" be replaced with "gift" as in UAGA.

✓ #3 - We agree with the drafters suggestion that the introduction to (c) and (d) be made consistent. We recommend - "If an anatomical gift of one or more parts is made..." Deleting the word "specific" may make it clearer that a gift of all parts is included.

p. 23 -

✓ #1 - The change to (e) is acceptable.

✓ #2 - The change to (f) is acceptable.

✓ #3 - We support keeping (g) as in the draft. Other law controls responsibility for disposal. It does not need to be repeated here.

✓ #4 & 5 - The changes to (h) commented on in notes #4 and #5 are acceptable.

p. 24 -

✓ #1 - We support the proposed additional change to (h).

✓ #2 - We support the proposed change to (10), namely referring to anatomical gift instead of record gift, except in (h), where presumption of actual knowledge should only apply to a record of gift.

p. 25 -

✓ #1 - We support the second option suggested by the drafter, which could be accomplished by inserting "revoke or" before "make" in line 3.

✓ #2 - This is acceptable.

✓ #3 - We support leaving (13)(a) intro as written. If our recommendation on the definition of decedent (see p.6 - notes #3 & #4) is adopted, then there will be no inconsistency.

✓ #4 - We support (13)(a)(2) as written in the draft. It is workable. There is no need to be more prescriptive.

p. 26 -

✓ #1 - (13)(a) intro specifies that the entire subsection (a) applies at or near death, so we support deleting "and the minor dies" from p. 25, line 17 of (3). We also support deleting "record of" from p. 26, line 2. *Also p. 25, lines 16-17?*

✓ #2 - We support 13(a)(4) as drafted.

✓ #3 - We support the proposed change of the first sentence that is included in the note.

p. 27 -

✓ #1 - We support the move.

✓ #2 - We support the proposed replacement of "ensure" with "determine."
We support leaving the wording regarding "intended purpose" as it is in the draft.

✓ #3 - Section (10)(g) addresses the situation where a body or part cannot be used and rights revert to the person responsible for disposal. Thus, we can understand why (13)(d) is subject to (10)(g). Thus, we support not changing this aspect of (13)(d).

✓ #4 - We support (13)(d) as stated in the draft.

✓ #5 - We support replacing "record of gift" with "anatomical gift."

p. 28 -

✓ #1 - We recommend that the original UAGA wording of (14)(j) be used in (13)(g), instead of the replacement wording. We are concerned that the replacement wording could result in unnecessary restrictions on who can perform these functions.

✓ #2 & 3 - We recommend that the criminal provisions not be expanded beyond the scope of UAGA.

p. 29 -

✓ #1 - We support the insertion of "purporting to be" after "individual" in p. 29, line 1.

✓ #2 - We support changing (17) to apply to all gifts, by deleting "record of " throughout the section and replacing "executed" with "made."

p. 30 -

✓ #1 - We support the draft as written.

p. 32 -

✓ #1 - We support adding "or therapy" to (21)(a) and (21)(c).

p. 37 -

✓ #1 - We do not object to (23)(c).

p. 39 -

✓ #1 - We suggest that the revision of section 252.15 in the bill be kept as drafted.

p. 41 -

✓ #1 - We support the repeal of 343.175(3)(b). It is consistent with the UAGA position that symbol can be sufficient.

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[Page 498-499]

TITLE 42--PUBLIC HEALTH

CHAPTER IV--CENTERS FOR MEDICARE & MEDICAID SERVICES, DEPARTMENT OF
HEALTH AND HUMAN SERVICES (CONTINUED)

PART 482_CONDITIONS OF PARTICIPATION FOR HOSPITALS--Table of Contents

Subpart C_Basic Hospital Functions

Sec. 482.45 Condition of participation: Organ, tissue, and eye
procurement.

(a) Standard: Organ procurement responsibilities. The hospital must
have and implement written protocols that:

(1) Incorporate an agreement with an OPO designated under part 486
of this chapter, under which it must notify, in a timely manner, the OPO
or a third party designated by the OPO of individuals whose death is
imminent or who have died in the hospital. The OPO determines medical
suitability for organ donation and, in the absence of alternative
arrangements by the hospital, the OPO determines medical suitability for
tissue and eye donation, using the definition of potential tissue and
eye donor and the notification protocol developed in consultation with
the tissue and eye banks identified by the hospital for this purpose;

(2) Incorporate an agreement with at least one tissue bank and at
least one eye bank to cooperate in the retrieval, processing,
preservation, storage and distribution of tissues and eyes, as may be
appropriate to assure that all usable tissues and eyes are obtained from
potential donors, insofar as such an agreement does not interfere with
organ procurement;

(3) Ensure, in collaboration with the designated OPO, that the
family of each potential donor is informed of its options to donate
organs, tissues, or eyes or to decline to donate. 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;

(4) Encourage discretion and sensitivity with respect to the
circumstances, views, and beliefs of the families of potential donors;

(5) Ensure that the hospital works cooperatively with the designated
OPO, tissue bank and eye bank in educating staff on donation issues,
reviewing death records to improve identification of potential donors,
and maintaining potential donors while necessary testing and placement
of potential donated organs, tissues, and eyes take place.

(b) Standard: Organ transplantation responsibilities. (1) A hospital
in which organ transplants are performed must be a member of the Organ
Procurement and Transplantation Network (OPTN) established and operated
in accordance with section 372 of the Public Health Service (PHS) Act
(42 U.S.C. 274) and abide by its rules. The term "rules of the OPTN"
means those rules provided for in regulations issued by the Secretary in
accordance with section 372 of the PHS Act which are enforceable under

42 CFR 121.10. No hospital is considered to be out of compliance with

[[Page 499]]

section 1138(a)(1)(B) of the Act, or with the requirements of this paragraph, unless the Secretary has given the OPTN formal notice that he or she approves the decision to exclude the hospital from the OPTN and has notified the hospital in writing.

(2) For purposes of these standards, the term ``organ'' means a human kidney, liver, heart, lung, or pancreas.

(3) If a hospital performs any type of transplants, it must provide organ-transplant-related data, as requested by the OPTN, the Scientific Registry, and the OPOs. The hospital must also provide such data directly to the Department when requested by the Secretary.

[63 FR 33875, June 22, 1998]