

CHAPTER 182
FORMERLY
HOUSE BILL NO. 205

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO ANATOMICAL GIFTS AND STUDIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 27, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

Subchapter II. Uniform Anatomical Gift Act

§ 2710 Definitions.

As used in ~~subchapters this subchapter II and III of this chapter:~~

~~(1) "Acute care general hospital" means a hospital that provides diagnostic and therapeutic services to patients for a variety of medical conditions both surgical and nonsurgical and in which the average length of stay for all patients is less than 30 days.~~

(1) "Adult" means an individual who is at least 18 years of age.

(2) "Advance healthcare directive" means a directive under § 2503 of this title.

(3) "Agent" means an individual authorized to make healthcare decisions on another's behalf by a power of attorney or an individual expressly authorized to make an anatomical gift on another's behalf by any other record signed by the individual giving the authorization.

~~(2) "Anatomical donation" or "anatomical donor" means a human body part donation or a human body part donor.~~

(4) "Anatomical gift" means a donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation, therapy, research, or education.

~~(3) "Bank or storage facility" means a facility licensed, accredited or approved under the laws of any state for storage of human bodies or parts thereof.~~

~~(4)-(5)~~ "Decedent" means a deceased individual and includes a stillborn infant or fetus.

~~(5)-(6)~~ "Department" means the Delaware Department of Health and Social Services.

(7) "Designated requestor" means a hospital employee completing a course offered by the OPO on how to approach potential donor families and request organ and tissue donation.

(8) "Document of gift" means a donor card or other record used to make, amend, or revoke an anatomical gift. The term includes a statement or symbol on a driver's license or identification card or in a donor registry.

(9) "Delaware Registry" means that subset of persons in the Department of Transportation's driver's license and photo identification card database or any expanded or successor database who have elected to include the donor designation on their record.

(10) "Donee" means a person authorized to receive an anatomical gift.

~~(6)-(11)~~ "Donor" means an individual who makes a gift of all or part of the individual's body.

(12) "Donor registry" means a database which contains records of anatomical gifts. The term includes the Donate Life Delaware Registry.

(13) "Eye bank" means a person that is licensed, accredited or regulated under Federal or state law to engage in the recovery, screening, testing, processing, storage or distribution of human eyes or portions of human eyes.

~~(7)-(14)~~ "Fund" means the Organ and Tissue Donor Awareness Trust Fund.

~~(8)~~-(15) "Hospital" means a hospital licensed, accredited or approved under the laws of any state and includes a hospital operated by the United States government, a state or a subdivision thereof, although not required to be licensed under state laws.

(16) "Know" means to have actual knowledge.

(17) "Medical examiner" means the Chief Medical Examiner, a Deputy Medical Examiner, an Assistant Medical Examiner, or their designee.

(18) "Minor" means an individual who is under 18 years of age.

~~(9)~~-(19) "OPO" means the federally certified organ procurement organization for the State.

~~(10)~~-(20) "Part" includes organs, tissues, eyes, bones, arteries, blood, other fluids and other portions of a human body, and "part" includes "parts".

~~(11)~~-(21) "Person" means an individual, corporation, government or governmental subdivision or agency, statutory trust, business trust, estate, trust, partnership or association or any other legal entity.

(22) "Person authorized or obligated to dispose of a decedent's body" means any of the following without regard to order or priority:

a. A medical examiner having jurisdiction over the decedent's body.

b. A warden or director of a correctional facility where the decedent was incarcerated.

c. An individual who is otherwise authorized or obligated to dispose of a decedent's body.

d. An official of an entity that is otherwise authorized or obligated to dispose of a decedent's body.

~~(12)~~-(23) "Physician" or "surgeon" means a physician or surgeon licensed or authorized to practice under the laws of any state.

(24) "Prospective donor" means a person who is dead or whose death is imminent and has been determined by the OPO to have a part that could be medically suitable for transplantation, therapy, research, or education.

(25) "Reasonably available" means able to be contacted by the OPO, eye bank or tissue bank through the exercise of reasonable due diligence and willing and able to act in a timely manner consistent with existing medical criteria necessary to make an anatomical gift.

(26) "Recipient" means an individual into whose body a decedent's part has been or is intended to be transplanted.

(27) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

~~(13)~~-(28) "Recovery specialist" means a medical professional licensed by this or another state or technician trained in accordance with federal standards pursuant to 42 U.S.C. § 274(b) and nationally accredited standards for human body part removal.

~~(14)~~-(29) "State" includes a state, district, commonwealth, territory, insular possession and any other area subject to the legislative authority of the United States of America.

(30) "Tissue bank" means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of tissue.

§ 2711 Persons who may execute an anatomical gift.

(a) Any individual of sound mind and 18 years of age or more or an agent of such an individual, or an individual not of such age who has parental consent may give all or any part of the individual's body for any purposes specified in § 2712 of this title, the gift to take effect upon the donor's death. However, a married minor may make such a donation without parental consent.

(b) "Parental consent" as used in this section shall be defined as the ~~written-recorded~~ permission by any of the following persons in order of priority stated below when persons of prior classes are no longer living or no longer have contractual capacity and when there is no notice to a donee of an objection, written or otherwise, by a person of the same class:

- (1) Either parent;
- (2) A legal guardian;
- (3) Any individual having legal custody.

(c) Any of the following persons, who is reasonably available, 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-known objections~~ by the decedent or ~~actual notice of opposition~~ by a member of the same or a prior class, may give all or any part of the decedent's body for any purpose specified in § 2712 of this title:

- (1) An agent of the decedent;
- (2) The spouse of the decedent (unless a petition for divorce has been filed);
- (3) An adult son or daughter, 18 years of age or older child of the decedent;
- (4) Either A parent of the decedent;
- (5) An adult brother or sister sibling of the decedent;
- (6) An adult grandchild of the decedent;
- (7) An adult niece or nephew of the decedent;
- (8) An adult aunt or uncle of the decedent;
- (9) Any other person related to the decedent by blood, marriage or adoption or an adult who exhibited special care and concern for the decedent;
- (10) A guardian of the person of the decedent at the time of death;
- (11) Any other person authorized or under obligation to dispose of the decedent's body;
- (12) A hospital administrator or their designee of the institution at which the decedent was a patient at the time of death.

(d) If the donee ~~has actual notice of contrary indications-knows of an objection~~ by the decedent or that a gift authorized by a member of a class is opposed by fifty percent or more of the reasonably available members of the same class or by a member of a prior class, the donee shall not accept the gift. The persons authorized by subsection (c) of this section may make the gift after death or immediately before death. A gift made by a person authorized pursuant to subsection (c) may be amended or revoked by that person subject to § 2715(d).

(e) A gift of all or part of a body authorizes any examination necessary to assure medical acceptability of the gift for the purposes intended.

(f) The rights of the donee created by the gift are paramount to the rights of others except as provided by § 2716(f) of this title.

(g) A donor's gift of all or any part of the individual's body, as indicated pursuant to this chapter, including, but not limited to, a designation on a driver's license or identification card, donor card, advance healthcare directive, will or other document of gift, may not be revoked by the next-of-kin or other persons identified in subsection (c) of this section, nor shall the consent of any such person at the time of the donor's death or immediately thereafter be necessary to render the gift valid and effective.

(h) The absence of a document of gift, in and of itself, shall not create any presumption regarding the person's wishes regarding anatomical donation.

§ 2712 Persons who may become donees, and purposes for which anatomical gifts may be made.

(a) The following persons may become donees of gifts of bodies or parts thereof for the purposes stated: An anatomical gift may be made to any of the following persons named in the document of gift:

(1) Any hospital, surgeon or physician, for medical or dental education, research, advancement of medical or dental science, therapy or transplantation; or If for research or education, then to a hospital; accredited medical school, dental school, college or university; the organ procurement organization; or other appropriate person as permitted by law.

(2) Any accredited medical or dental school, college or university for education, research, advancement of medical or dental science or therapy; or Subject to subsection (b), an individual designated by the person making the anatomical gift if the individual is the recipient of the part.

(3) Any bank, storage facility or OPO for medical or dental education, research, advancement of medical or dental science, therapy or transplantation; or An eye bank or tissue bank.

(4) Any specified individual for therapy or transplantation needed by that individual An organ procurement organization.

(b) If an anatomical gift to an individual under subsection (a) (2) cannot be transplanted into the individual, the part passes in accordance with subsection (c) in the absence of a known objection by the person making the anatomical gift.

(c) An anatomical gift of an organ for transplantation or therapy, other than an anatomical gift under subsection (a) (2), passes to the organ procurement organization.

(d) If the intended purpose or recipient of an anatomical gift is not known the following shall apply:

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

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

(3) If the part is an organ, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(e) If a document of gift provides for multiple purposes without indicating priority, and transplantation and therapy is one of the purposes, then transplantation and therapy shall be the priority, and the gift, if suitable, shall pass to the appropriate organ procurement organization. If the gift cannot be used for transplantation or therapy, the gift may then be used for any of the other permitted purposes.

(f) If an anatomical gift is made in a document of gift that does not name a person described in subsection (a) and does not identify the purpose of the gift, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection (d).

§ 2713 Manner of executing anatomical gifts.

(a) A gift of all or part of the body under § 2711(a) of this title may be made by will. The gift becomes effective upon the death of the testator without waiting for probate. If the will is not probated, or if it is declared invalid for testamentary purposes, the gift, to the extent that it has been acted upon in good faith, is nevertheless valid and effective.

(b) A gift of all or part of the body under § 2711(a) of this title may also be made by a document other than a will. ~~The gift becomes effective upon the death of the donor. The document, which may be a card designed to be carried on the person, must be, including authorizing a statement or symbol indicating that the donor has made an anatomical gift to be recorded in a donor registry or on the donor's driver's license or identification card, or a card or other record signed by the donor in the presence of 2 witnesses who need not be in the presence of each other but who must sign the document in the donor's presence.~~ If the donor ~~cannot~~ or other person making a gift is physically

unable to sign a record, the document record may be signed for the donor at the donor's direction and in the donor's presence and in the presence of 2 witnesses who must sign the document in the donor's presence. Delivery of the document of gift during the donor's lifetime is not necessary to make the gift valid. Revocation, suspension, expiration or cancellation under Title 21 (Motor Vehicles) of a driver's license or identification card upon which an anatomical gift is indicated does not invalidate the gift.

(c) The gift may be made to a specified donee or without specifying a donee. ~~If the latter, the gift may be accepted by the attending physician as donee upon or following death. If the gift is made to a specified donee who is not available at the time and place of death, the attending physician upon or following death, in the absence of any expressed indication that the donor desired otherwise, may accept the gift as donee. The~~ A physician who becomes a donee under this subsection shall not participate in the procedures for removing or transplanting a part.

~~(d) Notwithstanding § 2716(b) of this title, the donor may designate in the donor's will, card or other document of gift the surgeon, physician or recovery specialist to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the gift may employ or authorize any surgeon, physician or recovery specialist for the purpose or, in the case of a gift of eyes, donee or authorized person may employ or authorize an undertaker licensed by the State or a qualified eye bank technician on the staff of the Medical Eye Bank of Delaware or the Lion's Eye Bank of Delaware Valley who has successfully completed a course in eye enucleation approved by the Medical Examiner of the State to enucleate eyes for the gift after certification of death by a physician. A qualified undertaker or eye bank technician acting in accordance with this subsection shall be free from civil and criminal liability with respect to the eye enucleation.~~

~~(e)~~ Any gift by a person designated in § 2711(c) of this title shall be made by a document signed by the person or made by the person's telegraphic, recorded, telephonic or other recorded message.

~~(f)~~ A person who so directs the manner in which the person's body or any part of the person's body shall be disposed of shall receive no remuneration or other thing of value for such disposition.

(f) A document of gift is valid if executed in accordance with:

(1) this chapter;

(2) the law of the state or country where it was executed; or

(3) the law of the state or country where, at the time of execution of the document of gift, the person making the anatomical gift (i) is domiciled; (ii) has a place of residence; or (iii) is a citizen.

(g) If a document of gift is valid under this section, the law of Delaware governs interpretation of the document.

(h) A person may rely on a document of gift or amendment of an anatomical gift as being valid unless that person knows that it was not validly executed or was revoked.

§ 2714 Delivery of document of gift.

If the gift is made by the donor to a specified donee, the will, card or other document of gift, or an executed copy thereof, may be delivered to the donee to expedite the appropriate procedures immediately after death, but delivery is not necessary to the validity of the gift. The will, card or other document of gift, or an executed copy thereof, may be deposited in any hospital, bank or storage facility or registry office that accepts them for safekeeping or for facilitation of procedures after death. On request of any interested party upon or after the donor's death, the person in possession shall produce the document for examination.

§ 2715 Amendment or revocation of the gift.

(a) If the will, card or other document or executed copy thereof has been delivered to a specified donee, the donor may amend or revoke the gift by:

(1) The execution and delivery to the donee of a signed statement;

(2) An oral statement made in the presence of 2 persons and communicated to the donee;

(3) A statement during a terminal illness or injury addressed to an attending physician and communicated to the donee; or

(4) A signed card or document found on the person or in the person's effects.

(b) Any document of gift which has not been delivered to the donee may be revoked by the donor in the manner set in subsection (a) of this section or by destruction, cancellation or mutilation of the document and all executed copies thereof.

(c) Any gift made by a will may also be amended or revoked in the manner provided for amendment or revocation of wills or as provided in subsection (a) of this section.

(d) Unless a revocation of a gift under this section includes an objection or refusal to make a gift of a part, it shall not prohibit person listed in section 2711(c) from authorizing such a gift.

§ 2716 Rights and duties at death.

(a) The donee may accept or reject the gift. If the donee accepts a gift of the entire body, the donee may, subject to the terms of the gift, authorize embalming and the use of the body in funeral services. If the gift is of a part of the body, the donee, upon the death of the donor and prior to embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the surviving spouse, next of kin or other persons under obligation to dispose of the body. The heir of any donor, at the time the disposition of the body takes place, may submit a request in writing to the donee that the body be returned to the heir at such time as the donee either refuses the disposition of the entire body or the parts thereof or determines that the donee no longer has use of the remains.

(b) A surgeon, physician, funeral director, recovery specialist or eye bank technician who is authorized to remove any part in accordance with this subchapter is also authorized to draw or secure a blood sample from the donor, in order to screen the tissue received for medical purposes.

(c) The time of death shall be determined by a physician who attends the donor at the donor's death or, if none, the physician who certifies the death. This physician shall not participate in the procedures for removing or transplanting a part.

(d) A person who acts in good faith in accord with the terms of this subchapter or under the anatomical gift laws of another state (or a foreign country) is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for that act.

(e) Where no other provision for the same exists, a body, or the remains thereof, after it is no longer needed for the purpose indicated by the donor, may be buried at public expense on order of the Medical Council of Delaware, but in no case shall the expense of the burial exceed \$100.

(f) This subchapter is subject to the laws of this State prescribing powers and duties with respect to autopsies. The OPO is authorized to obtain a copy of an autopsy report in a timely fashion upon request and payment of reasonable copying fees.

~~§ 2719 Forms.~~

~~The following forms may be used to accomplish the purposes of this subchapter:~~

~~Anatomical Gift by Next of Kin or Other Authorized Person~~

~~I,....., hereby make this anatomical gift of or from to the body of..... who died on..... at the..... in..... The marks in the appropriate squares and the words filled into the blanks below indicate my relationship to the deceased and my desires respecting the gift.~~

I am the surviving: ()spouse; ()adult son or daughter; ()parent; ()adult brother or sister; ()guardian;, authorized to dispose of the body:

I give ()the body of deceased; ()any needed organs or parts; ()the following organs or parts.....;

To the following person (or institution)..... (insert the name of a physician, hospital, research or educational institution, storage bank or individual), for the following purposes: ()any purpose authorized by law; ()transplantation; ()therapy; ()research; ()medical education.

Dated..... City and State.....

Signature of Survivor

Address of Survivor Anatomical Gift by a Living Donor

I am of sound mind and 18 years or more of age.

I hereby make this anatomical gift to take effect upon my death. The marks in the appropriate squares and words filled into the blanks below indicate my desires.

I give: ()my body; ()any needed organs or parts; ()the following organs or parts ;

To the following person or institutions ()the physician in attendance at my death; ()the hospital in which I die; ()the following named physician, hospital, storage bank or other medical institution.....; ()the following individual for treatment.....; for the following purposes: ()any purpose authorized by law; ()transplantation; ()therapy; ()research; ()medical education.

Dated..... City and State.....

Signed by the Donor in the presence of the following who sign as witnesses.

Witness Signature of Donor

Witness Address of Donor Anatomical Gift by a Living Minor Donor

I am of sound mind and under 18 years of age.

I hereby make this anatomical gift to take effect upon my death with the parental consent of the undersigned. The marks in the appropriate squares and the words filled into the blanks below indicate my desires.

I give: ()my body; ()any needed organs or parts; ()the following organs or parts ;

To the following person or institutions ()the physician in attendance at my death; ()the hospital in which I die; ()the following named physician, hospital, storage bank or other medical institution.....; ()the following individual for treatment.....; for the following purposes; ()any purpose authorized by law; ()transplantation; ()therapy; ()research; ()medical education.

Dated..... City and State.....

The undersigned parent or other person authorized by law grants permission for the above anatomical gift.

Signed by the Donor and the person giving parental consent in the presence of the following who sign as witnesses.

Signature of Donor

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Witness Address of Donor

~~Signature of Parent or
other Person Authorized by Law~~

=====

~~Witness Address of Consenting Party~~

~~Subchapter III. Request for Consent to an Anatomical Gift and Establishment of Organ and Tissue
Donation Awareness Trust Fund~~

~~§ 2721 Requests for anatomical gifts.~~

~~(a) Identification of potential anatomical donors. At or near the time of death of any patient ~~age 75 years or less in an acute care general~~ in a hospital, the attending physician or hospital designee shall make contact with the OPO in order to determine the suitability for organ, tissue and eye donation for any purpose specified under this chapter. This contact and the disposition shall be noted in the patient's medical record.~~

~~(b) Protocol for referral of potential anatomical donors to OPO.~~

~~(1) The person designated by the ~~acute care general~~ hospital to contact the OPO shall have the following information available:~~

- ~~a. Patient's name and identifier number;~~
- ~~b. Patient's age;~~
- ~~c. Anticipated cause of death;~~
- ~~d. Past medical history; and~~
- ~~e. Other pertinent medical information.~~

~~(2) The OPO, in consultation with the patient's attending physician or his/her designee or the hospital's designee shall determine suitability for donation. This determination must be made prior to the initiation of any request of the persons identified under § 2711(c) of this title for anatomical donation.~~

~~(2)a. If the OPO determines that donation is not appropriate based on established medical criteria, this shall be noted by hospital personnel in the patient's record and no further action shall be necessary.~~

~~b. If the OPO determines that the patient is a suitable candidate for anatomical donation, a request shall be initiated by informing the appropriate persons under § 2711(c) of this title of the option to donate organs, tissue or eyes. The request for anatomical donation shall be made by a representative of the OPO in consultation with the attending physician or the hospital designee. In those cases where the attending physician desires to approach the family to discuss organ or tissue donation, the attending physician may do so when accompanied by a representative of the OPO. The person making the request shall ask persons pursuant to § 2711(c) of this title whether the deceased had a validly executed donor card, will, other document or gift, driver's license or identification card evidencing an anatomical gift. If there is no such evidence of an anatomical gift, then the person designated under § 2711(c) of this title shall be informed in accordance with this chapter of the option to donate organs, tissue or eyes.~~

~~c. Each hospital may designate tissue recovery provider(s) to serve the hospital. Each hospital shall notify the OPO in writing of designation(s) it makes, if any. Hospital designated tissue recovery provider(s) shall work cooperatively with the OPO to support the development and/or release of any consent or medical information regarding a potential donor.~~

~~b. If the OPO determines that donation may be appropriate, the OPO shall make a reasonable search of the records of the Donate Life Delaware Registry or the applicable state~~

donor registry that it knows exists for the geographic area in which the individual resided or resides in order to ascertain whether the individual has made an anatomical gift.

c. If the referred patient has a document of gift, including registration with the Donate Life Delaware Registry, the OPO representative or the designated requestor shall attempt to notify a person listed in § 2711(c) of the gift.

d. If no document of gift is known to the OPO representative or the designated requestor, one of these two individuals shall ask the persons listed in § 2711(c) whether the decedent had a validly executed document of gift. If there is no evidence of an anatomical gift by the decedent, the OPO representative or the designated requestor shall notify a person listed in § 2711(c) of the option to donate organs and tissues. The request for donation shall be made by the OPO representative, or the designated requester in consultation with the attending physician or the hospital designee.

(3) The person in charge of the hospital or that person's designated representative shall indicate in the medical record of the decedent:

a. Whether or not a document of gift is known to exist or whether a gift was made; and

b. The name of the person granting or refusing the gift and that person's relationship to the decedent.

(4) If the OPO determines, based upon a medical record review, that a hospitalized individual who is dead or whose death is imminent may be a prospective donor, the hospital shall, if requested by the OPO, conduct a blood or tissue test or minimally invasive examination, which is reasonably necessary to evaluate the medical suitability of a part that is or may be the subject of an anatomical gift. Specific consent to testing or examination under this subparagraph is not required. The results of tests and examinations under this subparagraph shall be used or disclosed only:

a. To evaluate medical suitability for donation and to facilitate the donation process; and

b. As required or permitted by law.

(5) The attending physician, in collaboration with the OPO, shall ensure that, prior to the withdrawal or withholding of any measures which are necessary to maintain the medical suitability of a part that is or may be the subject of an anatomical gift, the OPO has either:

a. Had the opportunity to advise the applicable persons set forth in § 2711(c) of the option to make an anatomical gift; or

b. Ascertained that the individual expressed a known objection.

(36) ~~Within 1 year of enactment of this section, each acute care general~~ Each hospital in the state shall develop and implement a protocol for referring potential anatomical donors as provided in this section. The protocol shall require that, at or near the time of the death of any patient ~~age 75 years or less~~, the ~~acute care general~~ hospital shall contact by telephone the OPO to determine suitability for anatomical donation of the potential donor. The protocol shall encourage discretion and sensitivity to family circumstances and beliefs in all discussions regarding donations of organs, tissue or eyes.

a. Limitation. If the hospital staff advises the OPO that the hospital staff has ~~received~~ actual ~~notice~~ knowledge that the decedent did not wish to be an anatomical donor, the gift of all or any part of the decedent's body shall not be requested.

b. Medical Record Reviews. Death Medical record reviews must be performed annually in each acute care general hospital for the sole purpose of determining anatomical donor potential at the hospital. The hospital may perform the medical record review or may designate the OPO to

conduct the review. If the hospital chooses to conduct its own review, it must do so in accordance with clinical specifications and guidelines established by the OPO. If the hospital conducts the review, the OPO must provide the necessary training to hospital personnel conducting the review. The hospital must report the results of the review to the OPO no later than 45 days following the completion of the review. If the hospital designates the OPO to conduct the review, the OPO shall provide the hospital with written assurance that the OPO shall maintain the confidentiality of patient identifying information."

c. After a donor's death, a person to whom an anatomical gift may pass under § 2712 may conduct a test or examination which is reasonably necessary to evaluate the medical suitability of the body or part for its intended purpose.

d. Any examination conducted under this section may include an examination and copying of records necessary to determine the medial suitability of the part. This subsection includes medical, dental and other health-related records.

e. A hospital shall enter into agreements or affiliations with the OPO for coordination of procurement and use of anatomical gifts.

(7) A physician or technician may remove a donated part from the body of a donor that the physician or technician is qualified to remove.

(8) A revocation of a gift made under this chapter is effective only if the applicable organ procurement organization, tissue bank, eye bank, or transplant hospital knows of and can reasonably communicate the revocation to the involved physicians or technicians before an incision has been made to remove a part from the donor's body or before invasive procedures have begun to prepare the recipient.

(c) A person, including a medical examiner, that seeks to facilitate the making of an anatomical gift for the purposes of transplantation or therapy from a decedent who was not a hospital patient at the time of death shall notify the OPO at or around the time of the person's death in order to allow the OPO to evaluate the potential donation and, if applicable, coordinate the donation process.

(d) The OPO may, upon request and payment of associated fees, obtain certified copies of death records of a donor from the Delaware Department of Health and Social Services, Office of Vital Statistics.

§ 2722 ~~Persons qualified to consent~~Confidentiality requirement.

~~The following persons may, in the order set forth herein, consent to or deny a request for an anatomical gift of any specific parts, organs or tissues of the body of a patient in a terminal condition and incompetent or a deceased person who has not made an anatomical gift. Such consent or denial shall be in writing. If there is a conflict among members of a class, the denial will control:~~

(a) General rule. Except as provided in subsection (b), no procurement organization may divulge any individually identifiable information acquired in the course of performing its responsibilities under this chapter except for the purpose of facilitating organ, eye or tissue donation and transplantation or as otherwise required under applicable laws.

(b) Donors and recipients. The identity of the donor and of the recipient may not be communicated unless expressly authorized by:

(1) ~~The spouse of the patient or decedent~~ recipient;

(2) ~~A child of the patient or decedent, if such child is 18 years of age or older~~If the donor is alive, the donor; and

(3) ~~Either parent of the patient or decedent~~;If the donor is deceased, the next-of-kin of the donor.

(4) ~~A sibling of the patient or decedent, if such sibling is 18 years of age or older; and~~

~~(5) The guardian of the patient or decedent at the time of the decedent's death.~~

§ 2723 ~~Recovery of human body parts by recovery specialist~~ Donate Life Delaware Registry.

~~A recovery specialist may recover a human body part for any purpose specified in this chapter. A physician shall not be required to be present during the recovery procedure. Nothing in this section shall be construed to limit a physician or other person authorized by law to recover human body parts pursuant to law.~~

(a) The database maintained by the Department of Transportation to record donor designations shall be known as the Donate Life Delaware Registry. The Registry shall include only affirmative donation decisions. Registration by a donor in the Registry shall constitute sufficient authorization to donate organs and tissues for transplantation and therapy.

(b) The Department of Transportation shall provide access by residents of the state to an internet-based interface that promotes organ and tissue donation and enables residents 18 years of age or older who apply for, hold, or seek to renew a Delaware driver's license or identification card or otherwise have a record in the database to register as donors and have their decisions integrated into the Donate Life Delaware Registry. The form and content of the interface shall be maintained in collaboration with the OPO.

(c) Within one year of the effective date of this section, the Department of Transportation shall establish a system which allows individuals who apply for, hold, or seek to renew a Delaware driver's license or identification card, or otherwise have a record in the database to add their donor designation to the Donate Life Delaware Registry by submitting a form to the Department at no cost to the registrant. The Department of Transportation may also provide the opportunity to individuals who do not otherwise have a record in the database to add a record and the donor designation to the Donate Life Delaware Registry.

(d) Donor designation information entered into the Donate Life Delaware Registry shall supersede prior conflicting information:

(1) Provided to the Donate Life Delaware Registry;

(2) On the individual's physical driver's license or identification card;

(3) On an advance healthcare directive;

(4) Submitted under § 2711; or

(5) Submitted under any other statutory provision.

(e) An information technology system adopted by the Department of Transportation or its successor after the effective date of this section shall continue to accommodate the inclusion of donor designation information into the database and the ongoing operation of the Donate Life Delaware Registry.

§ 2724 Organ donation designation on driver's license or identification card.

Beginning as soon as practicable but no later than July 1, 1998, the Delaware Division of Motor Vehicles shall modify the driver's license and identification card application process and renewal system to obtain information regarding an individual's consent to anatomical donation, including a process to allow persons under age 18 to register as donors with parental consent as defined in § 2711(b) of this title. The following question shall be asked:

Do you wish to have the organ donor designation printed on your driver's license?

Only an affirmative response of an individual shall be noted on the front of the driver's license or identification card with the word "Organ Donor" or a symbol indicating the donor designation and recorded in the ~~individual's computer record with the Division of Motor Vehicles~~ Donate Life Delaware Registry. The Department shall record and store all donor designations in the Donate Life Delaware Registry, regardless of whether a driver's license or identification card is issued. The OPO shall be given access to the foregoing donor information 24 hours a

day through the Division of Motor Vehicles computer database. Notwithstanding the Driver's Privacy Protection Act, Title 21, Section 305, the Division of Motor Vehicles is authorized to provide the OPO with the foregoing donor information. The OPO shall not be assessed a fee or other charges for such access. The donor designation on the driver's license or identification card or inclusion in the Donate Life Delaware Registry shall be deemed sufficient to satisfy all requirements for consent to organ and tissue donation.

~~§ 2725 Declaration concerning medical treatment~~Collaboration between departments and organ procurement organizations.

~~Consent to an anatomical gift under this statute shall not override an individual's declaration regarding medical treatment under Chapter 25 of this title.~~

(a) The Department of Transportation, in consultation with the OPO, shall establish an annual education program for employees of the Department of Transportation. The program shall focus on:

(1) Benefits associated with organ and tissue donations;

(2) Scope and operation of the state's donor program; and

(3) How the employees can:

a. Effectively inform the public about the donor program; and

b. Best assist those wishing to designate as donors, including use of the Donate Life Delaware Registry.

(b) State agencies are encouraged to collaborate with the OPO on initiatives designed to enhance awareness of organ and tissue donation and may collaborate with the OPO in applying for Federal, State or private grants.

~~§ 2727 Consent not necessary for~~Facilitation of anatomical donation~~gift from decedent whose death is under investigation.~~

(a) The OPO shall in all cases collaborate with the medical examiner to ensure the preservation of forensic evidence and collection of photographs and specimens. A medical examiner shall, upon request, release to the OPO the name, contact information and available medical and social history of a decedent whose death is under investigation. If the decedent's body or part is medically suitable for transplantation, therapy, research or education, the medical examiner shall release postmortem examination results to the OPO. The OPO may make a subsequent disclosure of the postmortem examination results or other information received from the medical examiner to support the purposes of the donation.

(b) Notwithstanding any provision of this chapter or any other law to the contrary, if the medical examiner has notice, by an advance healthcare directive, will, card or other document or as otherwise provided in this chapter, that a deceased person whose death is under investigation is a donor, the medical examiner shall perform an examination, autopsy or analysis of tissues or organs only in a manner and within a time period compatible with the preservation of the tissues or organs for the purpose of transplantation.

(c) If the examination, autopsy or analysis has not been undertaken under subsection (b), all of the following apply to cases involving a prospective organ donor:

(1) A physician or technician authorized to remove an anatomical gift from a donor may remove the donated part from the body of a donor whose death is under investigation for acceptance by a person authorized to become a donee subject to subsection (c)(2).

(2) The medical examiner shall be invited to be present during organ recovery if, in the judgment of the medical examiner, those organs may be involved in the cause of death. While in attendance, if the medical examiner determines that the organs are involved in the cause of death, the medical examiner may request a biopsy of those organs or deny removal of the anatomical gift. The medical examiner shall

explain in writing the reasons for determining that those organs may be involved in the cause of death and the basis for denying removal of the anatomical gift and shall include the written explanation in the records maintained by the medical examiner.

(3) The OPO shall pay the reasonable costs for the professional services of the medical examiner associated with attending the recovery under (c)(2) above.

(d) The physician or technician recovering a part from a donor under this section shall file upon request of the medical examiner, a report detailing the condition of the part of the body that is the anatomical gift. If appropriate, the report shall include a biopsy or medically approved sample from the anatomical gift.

~~Notwithstanding any law to the contrary, if a validly executed donor card, advance health care directive, will, other document of gift, driver's license or identification card evidencing an anatomical gift exists, consent at the time of death is not necessary to render the gift valid.~~

§ 2731 Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits and supersedes the Electronic Signatures in Global and National Commerce Act (Public Law 106-229, 15 U.S.C. § 7001 et seq.) but does not modify, limit or supersede section 101(c) of the Electronic Signatures in Global and National Commerce Act or authorize electronic delivery of any of the notices described in section 103(b) of the Electronic Signatures in Global and National Commerce Act.

Section 2. Amend Chapter 10 of Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

~~§ 1018. Maintaining anatomical gifts data.~~

~~(a) All hospitals covered by this section shall, if possible, ascertain from a patient upon an inpatient admission whether or not the patient has a validly executed donor card, will, other document of gift, or driver's license or identification card evidencing an anatomical gift. A hospital shall ascertain this information by including an inquiry on the hospital admission form to read as follows:~~

~~"Do you have a validly executed donor card, will, other document of gift, or driver's license or identification card evidencing an anatomical gift?"~~

~~The absence of a document of anatomical gift, in and of itself, shall not create any presumption regarding the patient's wishes regarding anatomical donation.~~

~~(b) All hospitals shall maintain as a part of a patient's permanent record such pertinent information about any anatomical gift which will facilitate the carrying out 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, such hospital shall make every reasonable effort to contact without delay the person, institution or organization to which such gift has been made.~~

Section 3. The invalidity of any section or provision of this Act shall not affect the validity and enforceability of any other section or provision of this Act, which shall remain in full force and effect.

Section 4. This Act shall take effect thirty (30) days after its enactment into law.

Approved September 03, 2015