



## What New York Hospitals Need to Know About: New York's Anatomical Gift Law

Changes effective June 23, 2020

Public Health Law PHL § 4300, § 4301, § 4305 & § 4306



The intention of the 2020 changes to New York State's Public Health law related to anatomical gifts is to strengthen the autonomy of donors and increase the state's rates of organ and tissue donation, resulting in more lives saved through transplantation. While New York has made recent improvements to its organ donation registry and processes, it still faces a severe organ shortage.

This legislation incorporates more explicit statutory definitions as well as clarifications to process and interpretation. It aligns New York State law more closely to the federal Uniform Anatomical Gift Act (UAGA) that was enacted in 1968 following the first successful heart transplant, was revised in 1987 and 2006 and has been adapted into law in all states. It is expected that simply bringing state anatomical gift rules into agreement with the UAGA will result in increased numbers of organ donors in New York, thus more lives saved.



The law establishes the organ procurement organization (OPO) as the caretaker or custodian of the anatomical gift to maintain the opportunity for donation. For every patient who has not made a decision about organ donation and not refused, the hospital and **LiveOnNY** shall collaborate to maintain medical suitability until the OPO has ascertained the individual's intent and acted, based on that intent.



The revised law specifies: "The hospital shall not withdraw any measures that are necessary to maintain the medical suitability of the [body] part until the procurement organization has had the opportunity to advise the applicable persons . . . of the option to make an anatomical gift, has documented or acted upon that decision, or has ascertained that the individual expressed a contrary intent."

**ALL** patients must be referred to **LiveOnNY** prior to vent withdrawal, when a family discussion is anticipated, as specified in the Organ Donation Clinical Triggers [right].

**LiveOnNY** is required to act expeditiously to fulfill its responsibilities to maintain the opportunity for donation with regard to the "prospective donor", defined as "an individual who is dead or near death and has been determined by a procurement organization to have a [body] part that could be medically suitable for transplantation, therapy, research, or education." This "does not include someone who has made a refusal," or expressly documented an intent to bar other persons from making an anatomical gift.



The autonomy of the donor is strengthened by this clarification of the definition of a "prospective donor" as well as what constitutes a "refusal." The law also provides further protection of the donor's rights with regard to revoking their documented donor designation post-mortem, requiring either later-executed legal documentation or an oral statement of revocation made in the presence of two people, one of whom is a neutral and objective "disinterested witness." Actual notice of contraindication is required. A family member stating that they heard the individual say they no longer wished to donate, for example, or citing that he/she would never have wanted to be a donor because of their religious beliefs, does not, alone, suffice to revoke a donor's self-designation. Additionally, removal from the donor registry does not equate to refusal to make a gift.

consult **LiveOnNY**  
within one hour of:

every cardiac death

or

a mechanically vented  
patient meeting any  
of these conditions:

- absence of two or more brain stem reflexes
- Glasgow Coma Scale ≤ 5
- family discussion of withdrawal of life-sustaining therapies is anticipated

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**Organ Donation Clinical  
Triggers**

The law now stipulates that in cases where the terms of an advance health care directive or proxy document concerning life-sustaining treatment are in conflict with the administration of measures necessary to ensure the medical suitability of a body part for transplantation or therapy, the physician and the “prospective donor” shall confer to expeditiously resolve the conflicting directives, with information from the OPO.

When the prospective donor has not legally documented his/her wishes, there are several changes to the law that pertain to families of a prospective donor.



Adult grandchildren and grandparents join the order of priority of classes of persons authorized to make an anatomical gift on behalf of the decedent. The new order of priority more fully represents New York’s family structure in today’s world, where in some cases grandchildren or grandparents are head of household.

The “Order of Priority” table [right] lists the revised hierarchy of classes who can authorize an anatomical gift. When an individual from the first class in the order of priority does not exist or is not reasonably available, the decision-making authority defers to the next class, and continues to skip to the next class where there is an individual who is identified and reasonably available.

The term “reasonably available” is more clearly defined in the new legislation as “able to be contacted by a procurement organization without undue effort and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift.”

### Order of Priority






Classes of persons authorized to make an anatomical gift, when the decedent has not documented his/her wishes:

- Health care agent
- Burial agent
- Spouse, if not legally separated, or domestic partner
- Adult son or daughter
- Either parent
- Adult brother/sister
- Adult grandchildren **NEW**
- Grandparents
- Guardian of the person of the decedent
- Any other person authorized or under obligation to dispose of the body

Except in the case of parents, an anatomical gift may only be made by if that person does not know of an objection by another in the same class. If an objection is known, the gift may be made by a simple majority of the members of that class who are reasonable available. The party(ies) authorizing donation are asked to certify that they a) do not know of any refusal or contrary indications by the donor to these gifts, or b) know of an objection by another authorized party in the same class who is reasonably available.



## From Best Practice to Common Practice

 <b>The Hospital</b>	 <b>The OPO</b>	 <b>Autonomy of the donor</b>	 <b>Family Considerations</b>	 <b>Collaboration Hospital &amp; LiveOnNY</b>
<ul style="list-style-type: none"> <li>• Maintain medical suitability until the OPO ascertains individual’s intent and can act on it</li> <li>• Timely notification of anticipation of vent withdrawal</li> <li>• Inclusion of the option for donation in end-of-life care</li> </ul>	<ul style="list-style-type: none"> <li>• Steward every anatomical gift as caretaker/custodian</li> <li>• Act expeditiously to maintain opportunity for donation with regard to a “Prospective Donor”</li> <li>• Attempt to locate and contact “Reasonably Available” persons who may authorize donation</li> </ul>	<ul style="list-style-type: none"> <li>• Protects the rights of self-designated donors</li> <li>• Honor their wishes</li> <li>• Resolve end-of-life conflicting advance directives</li> <li>• A neutral and objective “Disinterested Witness” is required to revoke or amend an authorization</li> </ul>	<ul style="list-style-type: none"> <li>• Adult Grandchildren and grandparents can now authorize donation</li> <li>• “Majority Rule” when a member of the class authorized to make an anatomical gift has an objection</li> <li>• When the party authorized to donate is not “Reasonably Available” and willing/able to act timely with regard to donation, the authority to donate skips to the next class</li> </ul>	<ul style="list-style-type: none"> <li>• Maintain medical suitability until the OPO has ascertained the individual’s intent and acted, based on that intent</li> <li>• Conflict Resolution for advance directives: physician and prospective donor confer, with information from the OPO, while medical suitability maintained</li> </ul>

### References:

2019 [New York Senate Bill No. 6000-A](#), *New York Two Hundred Forty-Second Legislative Session*.

Strong, C., Tator, A., Thibault, M. (2020, January 23). Improving New York’s Donation Process – New York Gift Act: Next Steps [Webinar]. Donate Life NYS.

New York’s Anatomical Gift Act 2020 Changes. [Memo] Donate Life New York State.