The Required Request Law

Recommendations of The New York State Task Force on Life and the Law

The New York State Task Force on Life and the Law
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March 1986

NEW YORK STATE TASK FORCE ON LIFE AND THE LAW

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Summary of Recommendations

As part of its mandate to develop public policy on a wide range of issues related to advances in medical technology, the Task Force on Life and the Law offers the following recommendations for implementation of the Required Request Law.

(1) A Certificate of Need for the creation of a new transplant center should include documentation of the social and economic consequences of the proposed expansion and its impact on the delivery of other medical services. Further, transplant centers that do not have a Certificate of Need to perform transplant services or have not received approval from the federal government for research and evaluation of transplant technologies should be prohibited from receiving organs for those services through the implementation of the Required Request Law.

(2) The Commissioner of Health should convene a panel of experts to develop public guidelines concerning the medical suitability of organ donors for each type of organ or tissue that may be requested pursuant to the Required Request Law. The guidelines should specify those medical conditions that would make the donor ineligible under any circumstances and those conditions under which the transplant surgeon or organ procurement agency may exercise discretion regarding suitability.

(3) The Department of Health should be charged with the responsibility of fostering the coordination and development of procurement efforts needed to implement the Required Request Law.

(4) The Required Request Law should be amended to provide that requests for organ donation should not be required unless: (1) there is an identifiable need for the organ for transplantation in the State or nationally; or (2) there is an identifiable need for the organ for research purposes in programs that have been reviewed through appropriate procedures.

(5) Requests should also not be required if there is no means of transporting and storing the organ.

(6) The persons designated to make the request for organ donation should be trained in the social, religious and cultural aspects of donation as well as in the medical and legal aspects of organ procurement.

(7) The physician for the potential organ donor should not be precluded from approaching the potential donor's family to discuss organ donation provided that the physician is not involved with the procedure for removing or implanting the requested organ.

(8) Information concerning the requests for donation should be recorded not only when the request is made, but also when it is not made.

Introduction

Governor Cuomo convened the Task Force on Life and the Law in March 1985. He asked the Task Force to develop legislation, regulations or policy recommendations on a broad range of issues related to advances in medical technology. Among those issues is organ transplantation.

On June 24, 1985, the New York Legislature passed the Required Request Law.[1] The law requires hospitals to request consent for organ and tissue donation from the family members of a deceased patient if the deceased is a suitable candidate for organ donation. The law identifies the persons to whom the request must be made and specifies that the request is not required if the hospital has prior notice of the decedent's or a family member's objection to donation or has reason to believe that organ donation would be contrary to the decedent's religious beliefs.

Governor Cuomo approved the legislation on August 2, 1985. In his approval message, he noted that the bill properly granted broad authority to the Commissioner of Health to oversee implementation of the law and stated that the Commissioner would invite comment from the Task Force on Life and the Law.[2]

The Task Force Report

The Task Force comments and recommendations on the Required Request Law are set forth in this report. The recommendations fall into three general categories which reflect the approach the Task Force has taken: broader policy concerns raised by passage of the legislation, issues regarding the law's implementation and proposed amendments to the law.

Since passage of the Required Request Law may have a substantial impact on the development of transplant services in the State, the Task Force decided that comments solely on implementation of the law would not suffice. There is instead a need to consider the wider significance of the law and the unanswered questions regarding the State's transplant system as implementation of the legislation moves forward. This report raises some of those broader issues which will be addressed by the Task Force in a more comprehensive fashion in future reports.

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[1] ***Request for Consent to an Anatomical Gift,*** **L. 1985, ch. 801, New York Public Health Law §4351.** ***See*** **copy attached as Appendix A.**

[2] **A copy of Governor Cuomo's Approval Message is attached as Appendix B.**

The Required Request Law

Since the first kidney transplant in 1954, organ transplantation has been hailed as one of modern medicine's most extraordinary achievements. Yet, despite much publicized advances, complex issues and obstacles remain. Among those obstacles are the extremely high cost of the procedure and post-hospitalization treatment, the limited number of centers capable of performing the operation and the mortality rate due to complications of the immunosuppressive therapy and organ rejection. Lastly, even when the funding and technology for transplantation are available, persons identified as candidates for organ transplantation may die because of a critical shortage of viable organs for transplantation.

The Required Request Law was proposed and enacted to respond to that need. The innovative legislation[3] seeks to increase the supply of organs by requiring hospitals, at the time of a patient's death, to request that the patient's family or legal guardian consent to a gift of any or all of the decedent's organs.[4]

Despite this compelling purpose, the Task Force is concerned that the law may have far-reaching consequences for the State's health care system. Those concerns are set forth in the following section of the Report.

The Report of the Massachusetts Task Force on Organ Transplantation, the most extensive state study conducted to date, underscored the critical importance of coordinated and careful planning for statewide policy regarding organ transplantation.[5] Enactment of the Required Request Law accelerates the need for that planning in New York even as it offers new hope to those whose survival depends upon the availability of an organ.

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[3] New York was the second state in the nation to enact a required request law. Oregon was the first state to enact such legislation and has just begun implementation. Or. Rev. Stat. §97.268 (1985). Similar legislation has also been adopted in California. Cal. Health & Safety Code §7184 (1985).

[4] The law refers to consent for donation of "all or any part" of the decedent's body. The organs and tissues generally used for transplantation include the solid organs (kidneys, livers and hearts) and corneas, skin, bones and bone marrow. The pancreas and the heart and lungs as a unit may also be transplanted. Throughout this Report, the word "organ" is used to refer to all transplantable organs and tissues.

[5] As stated in the *Report of the Massachusetts Task Force:* "Liver and heart transplantation should be introduced into the Commonwealth in a controlled phased manner that provides the opportunity for effective evaluation and review of its clinical, social and economic aspects by a publicly accountable body after an initial phase of 2-3 years of limited transplantation." *Report of the Massachusetts Task Force on Organ Transplantation,* Department of Public Health, Commonwealth of Massachusetts, October, 1984, p.10.

Recommendations of the Task Force

Broader Policy Issues

In considering the issues discussed in this section of the report, it must be emphasized that the Task Force has few answers to the questions it raises. At present, it appears that the information necessary to make an informed judgment about many of these issues is not available. The Task Force has just begun to explore these questions, many of which are complex and will require thorough research and analysis before recommendations can be made.

Projected estimates of the increase in organ donation that will occur following implementation of the Required Request Law are not available. Nonetheless, the Required Request Law is designed to, and undoubtedly will, produce a significant increase in the supply of organs for transplantation. It will also, therefore, increase the number of transplants in the State, although the extent of that increase depends on a wide range of factors, including the availability of funding for the transplants, the expansion of existing transplant centers and the creation of new centers.

The possibility of a rapid increase in the performance of transplant operations forms the basis for the Task Force's concerns. Any such increase will have ramifications for transplantation services and the New York State health care system as a whole.

The Task Force's concerns are as follows:

(1) *Reduction in the Quality of Care Provided to Transplant Patients.* The experience and expertise of a transplant center can be expected to have a direct impact on patient outcomes at the center. The proliferation of transplant services, without sufficient time for a corresponding increase in the medical capability and expertise needed to respond to that increase, may result in an overall decline in the quality of care provided to transplant patients.

(2) *Impact on Recipient Guidelines.* The guidelines for selection of transplant recipients on grounds of medical suitability are still evolving.[6] The increased availability of organs in New York and the creation of new transplant centers may well cause increased elasticity in the

[6] For example, until recently, many hospitals did not perform liver transplants on persons over age 55. That age limitation has now been rejected by the transplant center that originally proposed it. Comments by Thomas Starzl, Conference on Organ Transplantation, Arden House, December 6, 1985.

guidelines for selecting transplant recipients. Such changes in recipient criteria mil occur without the benefit of adequate study and analysis of the impact on patient outcomes, especially as the criteria shift to include older patients and those more susceptible to postoperative complications.

(3) *Allocation of Resources.* Organ transplantation is extremely expensive; the costs of organ procurement, surgery, post-hospitilization treatment and immunosuppressive therapy are great. While the cost of alternative medical therapies such as kidney dialysis may equal or exceed the cost of organ transplantation, the potential elasticity of guidelines for transplant recipients has serious implications for the allocation of medical resources in the State. Unless additional resources are allocated for health care, the widespread introduction of organ transplantation, especially the transplantation of extrarenal organs, may divert funds from equally critical medical care that currently serves a broader and, perhaps, poorer segment of the population. Moreover, careful review is needed to assure equitable and nondiscriminatory access to the costly transplant technology and the limited supply of organs so that transplant services will be equally accessible to all members of society.

The Task Force recognizes that other extreme and expensive treatments for patients with life-threatening conditions are widely available throughout the State, e.g., treatment for cancer. Nonetheless, questions concerning equitable access and the allocation of resources require that new technologies be carefully weighed against alternatives to assess their comparative cost-effectiveness, ethical implications and social and clinical consequences.[7]

Analysis of the outcomes of transplantation procedures, the allocation of finite medical resources and the establishment of guidelines for selecting organ donors and recipients should form the basis for transplantation policy in the State. Neither the increased supply of organs nor the existence of medical technology to conduct transplants should be permitted to shape the State's policies regarding

[7] For discussion about this analysis as it relates to organ transplantation, soe, T. Overcast, R. Evans, "Technology Assessment, Public Policy and Transplantation; A Restrained Appraisal of the Massachusetts Task Force Approach," *Law, Med. & Health. Care,* Vol. 13, No. 3, June, 1985 p.106; G. Annas, "The Dog and His Shadow; A Response to Overcast and Evans," supra, P 12.

transplantation without the benefit of careful evaluation and planning. It in therefore critical that the widespread integration of organ transplantation into New York State's health care system proceeds cautiously and deliberately.

RECOMMENDATION ONE

The Task Force recommends that a Certificate of Need[8] for a new organ transplant center should not be granted unless the applicant has documented the social and economic consequences of the proposed expansion and, specifically, its impact on the delivery of other medical services at the hospital where the center will be located. Since there is some uncertainty as to whether the Commissioner of Health currently has the statutory authority to require such information as part of the Certificate of Need appraisal process for transplant services, the Task Force recommends that consideration be given to amending Public Health Law §2802.3 and the regulations thereunder to empower the Commissioner to request and consider such information.

Every application for a new transplant center must also be carefully evaluated in light of the two other criteria which are already a part of the Certificate of Need review: (1) the need for the additional service; and (2) the availability of adequate facilities, staff and expertise to perform the procedure.

The Task Force believes that transplants should not occur at centers lacking public evaluation and approval. Therefore, the Task Force recommends that centers which do not have a Certificate of Need to perform transplant services, or have not received approval from the federal government for research and evaluation of transplant tedmologies, should be prohibited from receiving organs through the State's procurement network and the implementation of the Required Request Law.

[8] Pursuant to Article 28 of the Public Health Law, each hospital must obtain the approval of the Commissioner of Health to provide transplantation services. Public Health Law §2801 *et seq,* 10 NYCRR §710.1(cX2XiXbX4). The form of the approval is the Certificate of Need. Currently, there are 11 hospitals in the State that operate publicly approved centers for kidney transplantation. Only one hospital in New York has received a Certificate of Need to operate a program for heart transplantation. None of the hospitals in the State has public approval to perform liver transplants.

Guidelines for Transplant Practices

Despite the successes of recent years, organ transplantation is still a rapidly developing field of medical practice. A consensus concerning medical guidelines for important aspects of the transplantation process has not yet emerged. For example, guidelines for the selection of transplant recipients and screening procedures to protect donees from receiving diseased organs are still evolving. The result is twofold: variation in practices among facilities in the State and the danger of inadequate protection for transplant recipients.

The Required Request Law provides that a request for organ donation must be made if: (1) based on accepted medical standards a patient is a "suitable candidate" for organ donation; and (2) none of the exemptions specified in the law applies.

It is essential that uniform, public and enforceable guidelines concerning the medical suitability of potential organ donors be developed. These guidelines would not only protect individual organ recipients but would also serve the interests of society as a whole by promoting the appropriate and effective allocation of scarce medical resources.

Without effective screening of organ donors in accordance with established minimum standards, transplant recipients may be given a new organ only to die a more prolonged and painful death from a disease transmitted by the organ. In light of the AIDS epidemic in the State, this kind of tragedy is, unfortunately, a very real possibility.[9]

RECOMMENDATION TWO

The Task Force strongly recommends that the Commissioner of Health convene a panel of experts from within and outside the transplant community to develop guidelines concerning the medical suitability of organ donors. The guidelines should address the medical suitability of potential donors for all organs that may be requested pursuant to the Required Request Law. For each type of organ, the guidelines should specify those medical conditions which would make the potential donor ineligible under any circumstances and those conditions under which the transplant surgeon or organ procurement agency may exercise discretion regarding suitability. Finally, the guidelines should also set forth

[9] While the transmission of AIDS may be the greatest concern at present, other severe or fatal diseases such as cancer, myesthenia gravis and Creutzfeldt-Jakob can also be transmitted through transplantation. See, T. Overcast et.al., "Malpractice Issues in Heart Transplantation," 10 *Am. J. Law & Med.,* 1985, pp. 382-383; C.I.E. Smith, "Myesthenia Gravis After Bone Marrow Transplantation: Evidence for a Donor Origin," *New England Journal of Medicine (NEJM)* 309,1983, pp. 1565-1568; and P.J. Duffy, et al., "Possible Person to Person Transmission of Creutzfeldt-Jakob Disease," *NEJM,* 290, 1974, p. 692.

procurement and preoperative procedures to assure that organ donors are adequately screened.

Regulations implementing the Required Request Law should incorporate the guidelines developed by the panel. The guidelines should be reviewed and revised periodically as the technology develops and new questions of suitability arise.

Infrastructure

Since statistics regarding the potential increase in organ donation which the Required Request Law will generate are not available, it is not possible to determine whether the existing infrastructure for removal, transportation and storage of the organs donated pursuant to the law will be adequate. It is clear, however, that the law presents both new opportunities and new problems in procuring organs throughout the State.

RECOMMENDATION THREE

The Task Force recommends that the Department of Health should be charged with the responsibility of fostering the coordination and development of procurement efforts needed to implement the Required Request Law. Specifically, the Health Department should evaluate and take appropriate action concerning:

(1) the extent of cooperation and coordination among organ procurement agencies in different regions throughout the State;
(2) the capacity of the existing procurement network to cover all hospitals in the State, including hospitals in rural areas; and
(3) the relationship between procurement agencies in New York State and procurement networks across the nation.

The Task Force recognizes that this responsibility will require study and analysis of the State's procurement network. In addition, any longer term solution may require the allocation of funds for the creation of a central coordinating or administrative body. The Task Force urges that the necessary funds be made available to conduct the initial assessment and develop and support the necessary administrative mechanisms.

During the process of the Health Department evaluation and thereafter, the Task Force recommends that requests should not bo required at hospitals for organs unless a procurement agency or hospital transplant team is willing, available and capable of retrieving the organs. Families should not be forced to confront the difficult question of organ donation at a time of grief if there is no effective system in place to procure the organ and therefore no possibility that the organ requested will be used.

Relationship of the Requests to Need for the Organs and Tissue

Another important issue raised by the Required Request Law is the relationship, if any, that should be established between the requirement of a request and a demonstration of need for the organ requested. The determination of need has three component parts:

(1) Should need relate only to a need for the organ for transplantation purposes or for all purposes listed in Public Health Law §4302, e.g., research, education and the advancement of medical science?

(2) Should the determination of need be limited by state or national boundaries?

(3) How should need be measured, especially for purposes as broad as research and education?

Currently the organ procurement agencies in the State serve different and sometimes overlapping regions and there is no central coordinating entity. Information about the statewide need for organs, with the exception of information about the need for hearts and kidneys, is therefore not available from a single source.

Available data does indicate that there is a well-established and readily identifiable need for kidneys, hearts, livers and corneas in New York and nationally. In contrast, it is unclear that there is an existing and identifiable need for an increase in the supply of skin, bones and bone marrow or an adequate mechanism to determine that need. Since the number of potential donors for these tissues is very great, a required request for consent from the families of all suitable donors would have disturbing consequences, especially if need is related to general research and education rather than to specific research or educational projects.

RECOMMENDATION FOUR

The Task Force recommends that the requests should only be required if:

(1) there is an identified need for the organ for transplant purposes in the State or nationally; or

(2) there is an identified need for the organ for research purposes that is not met by the availability of organs procured and deemed unsuitable for transplantation. The need for organs for research should relate only to those research programs inside and outside the State which operate with the following safeguards: (1) review of the research by an Institutional Review Board; and (2) extra- institutional review of research protocols by the federal government or specially constituted peer review groups.

Since there is no existing system in the State to identify need as set forth above, the Task Force recommends that the State Health Department, in consultation with representatives of the organ procurement agencies and transplant centers in the State, develop a mechanism for the periodic determination and dissemination of information regarding the need for organs.

The Task-Force also recommends that, in all cases when it is known that the organ requested will be used solely for nontherapeutic research purposes, that fact must be communicated to the person to whom the request for consent is made.

Exceptions to the Request Requirement

The Required Request Law provides that requests for organ or tissue donation must be made unless one of the following exceptions applies:

(1) notice of contrary intentions by the decedent;
(2) actual notice of opposition by an immediate family member or legal guardian; or
(3) reason to believe that an anatomical gift is contrary to the decedent's religious beliefs.

RECOMMENDATION FIVE

The Task Force recommends that additional exceptions to the request requirement should be established. First, as set forth above, the Task Force believes that requests should not be required if the organs would not be used, e.g., if there is no means to transport and/or store the organs, or if there is no demonstrable need for the organs. Second, the Task Force recommends that the third exception listed above, reason to believe that the anatomical gift would be contrary to the decedent's religious beliefs, should be expanded to include a reference to contrary moral beliefs.

Approaching the Family to Request Consent

Pursuant to the Required Request Law, training must be provided to hospital personnel designated to make the requests. Adequate training is critical since many hospitals do not have staff members with experience in organ procurement.

RECOMMENDATION SIX

The Task Force recommends that training for persons designated to make the requests should include the following areas:

(1) appropriate conduct and sensitivity in dealing with grieving families;
(2) the special concerns involved in requesting consent from certain vulnerable members of society such as persons with diminished capacity;
(3) social, religious and cultural attitudes regarding organ donation;
(4) the medical and administrative aspects of the procurement, transportation and storage process;
(5) basic information about the transplantation process and the research purposes for which the organs are used; and
(6) the provisions of the Required Request Law, the implementing regulations and the Uniform Anatomical Gift Act.[10]

The Physician's Role in Making the Request

The Required Request Law provides that the hospital administrator or his designated representative "other than a person connected with the determination of death" shall make the request at the time of death. This provision of the law was designed to avoid the appearance of impropriety or conflict of interest by separating the procurement process from the determination of death. Nonetheless, the conflict of interest issue is gravest where actual conflict exists, i.e., where the person who makes the determination of death is involved with the procedure for removing or transplanting the organ. This conflict of interest is already specifically prohibited by State statute.[11]

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[10] Public Health Law §4300 *et seq.*

" Public Health Law §4306.2.

The Task Force believes that the patient's physician, especially if he or she has a long-standing relationship with the family, is often the most appropriate person to discuss organ donation with the family even if he or she is involved with the determination of death. Accordingly, where the physician is not involved with the transplantation procedure, he or she should be free to determine whether to discuss organ donation with the decedent's family or to leave the formal request to another appropriate hospital representative.

RECOMMENDATION SEVEN

The Task Force recommends that the treating physician, even if he or she is involved in the determination of death, should not be precluded from approaching the family to discuss organ donation, provided that the physician is not involved with the procedure for removing or transplanting the requested organ.

Documentation of the Request

The Required Request Law provides that a hospital administrator or his designee must complete a certificate of request in each instance that a request is made. The law does not require documentation of those instances when no request is made.

RECOMMENDATION EIGHT

The Task Force recommends that information concerning the request should be recorded not only when the request is made but also when it is not made. Further, the reasons for not making the request should also be documented. The Task Force recognizes that the latter requirement is an administrative burden not imposed by the law, but believes that the documentation will be essential to evaluate the law's impact. In light of the fact that New York is one of the first states to implement the law, this evaluation will be significant for New York and for the nation.

Proposed Amendments to the Law

The Task Force's recommendations concerning the Required Request Law can be achieved largely through the regulatory process. Although certain proposed action such as the assessment and coordination of the procurement network will not be in place when the final regulations become effective, those changes can be implemented by subsequent amendment of the regulations.

As it is currently drafted, the Required Request Law does not support any standard of need for the organ or a corresponding exception to the request requirement if no need exists. The Task Force's recommendation that such an exception be created can, therefore, be achieved only by amending the legislation. If such an amendment is sought, there are other provisions in the law that would benefit from legislative clarification but do not necessarily require legislative amendment.

In addition, amendment of Section 2802.3 of the Public Health Law may be necessary in order to implement the Task Force's recommendation that a Certificate of Need for a new organ transplant center should not be granted unless the applicant has documented the social and economic consequences of the proposed expansion.

Appendix A

STATE OF NEW YORK

4925--C

Cal. No. 1065

1985-1986 Regular Sessions

IN SENATE

April 2, 1985

Introduced by Sens. SMITH, BRUNO, PADAVAN, PRESENT, TRUNZO, VOLKER — read twice and ordered printed, and when printed to be conmitted to the Coamittee on Health -- reported favorably from said coenittee with aanndment's and ordered reprinted as aaended and when reprinted to be committed to the order of first report -- ordered to second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading — passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, — ended —d ordered reprinted, retaining its place in the order of third reading

AN ACT to aaend the public health law, in relation to anatomical gifts; consents

The People of the State of New York, represented in Senate and Assembly. do enact as follows:

Section 1. The public health law is —ended by adding a new article forty-three-A to read as follows:

ARTICLE 43-A

REQUEST FOR CONSENT TO AN ANATOMICAL GIFT

Section 4351. Duties of hospital administrator.

A i 4351. Duties of hospital administrator. 1. Where, based on accepted medical standards, a patient is a suitable candidate for organ or tissue donation, the person in charge of such hospital, or his designated representatlve. other than a person connected with the determination of death, shall at the time of death request any of the following persons. in the order of priority stated, when persons in prior classes are not available and in the absence of (1) actual notice of contrary intentions by the decedent, or (2) actual notice of opposition by a member of any of the classes specified in paragraph (a), (bl. (c). Cdl. or Cel hereof or (31 other reason to believe that an anatomical alft is contrary to the decedent s religious beliefs, to consent to the gift of all or any

EXPLANATION—Matter in italics (underscored) is new; matter in brackets ( ] is old law to be omitted.

LBD09667-10-5

part of the decedent's body for any purpose specified In article forty-three of this chapter:

(a) the spouse;

(b) a son or daughter twenty-one years of age or older;

(c) either parent;

(d) a brother or sister twenty-one years of age or older:

(e) **a** guardian of theperson of the decedent at the time of his death.

Where said hospital administrator or his designee shall have received actual notice of opposition froa any of the persons named in this subdivision or where there Is otherwise reason to believe that an anatomical gift is contrary to the decedent s religious beliefs, such gift of all or any part of the decedent s body shall not be requested. Where a donation is requested, consent or refusal need only be obtained from the person or persons in the highest priority class available.

2. Where a donation is requested, said person in charge of such hospital or his designated representative shall complete a certificate of request for an anatomical gift, on a form supplied by the commissioner. Said certificate shall include a statement to the effect that a request for consent to an anatoaical gift has been made, and shall further indicate thereupon whether or not consent was granted, the name of the person granting or refusing the consent, and his or her relationship to the decedent. Upon completion of the certificate, said person shall attach the certificate of request for an anatomical gift to the death certlfl-cate required bv this chapter or. In the city of New York, to the death certificate required bv the adelnlstratlva code of the city of New York.

3. A gift eade pursuant to the request required by this section shall be executed pursuant to applicable provisions of article forty-three of this chapter.

4. The commissioner shall establish regulations concerning the traln-lng of hospital employees who may be designated to perform the request. and the procedures to be employed in making it.

5. The commissioner shall establish such additional regulations as are necessary for the Implementation of this section.

$ 2. The commissioner of health shall conduct a study of existing transplant services in New York state and prepare projections regarding future need and the avallebility of such services. On or before July first, nineteen hundred eighty-seven, the commissioner of health shall submit a report to the governor and the legislature regarding the imple-nentation of this act, including the result of the study required herein and such recoamendations as tha coaaissioner aay deea appropriate.

S 3. This act shall take effect on the first day of January next suc-ceeding the date on which it shall have becoae a law.

Appendix B

STATE OF NEW YORK EXECUTIVE CHAMBER MARIO M. CUOMO, GOVERNOR

FOR RELEASE: IMMEDIATE, MONDAY AUGUST 5, 1985

Press Office
518474-8418
212-587-2126

STATE OF NEW YORK EXECUTIVE CHAMBER
ALBANY 12224

August 2, 1985

MEMORANDUM filed with Senate Bill Number 4925-C, entitled:

"AN ACT to amend the public health law, in relation to anatomical gifts, consents"

#58
(Chapter 801)

A P P R O V E D

The bill requires hospital personnel to seek permission from family members for the donation of organs from a suitable organ donor at the time of the potential donor's death.

Current law already authorizes organ donation either when decedents have executed an organ donor consent form or when family members authorize the donation after the prospective donor's death. The bill does not change who is empowered to authorize organ donations. The bill will, however, standardize a process of routinely inquiring about organ donation upon the death of a suitable donor, unless the hospital is already aware of the decedent's or a family member's objection to organ donation or has reason to believe an organ donation would be contrary to the decedent's religious beliefs. As with current law, if the family members decline the hospital's request to consent to the organ donation or if the hospital becomes aware of objections by other family members, the organ donation will not take place.

Dramatic advances in medical and surgical techniques, including the development of powerful immunosuppressive drugs, have made it possible to transplant a larger number and variety of organs to enhance or to extend life. The escalating demand for organs, prompted by those advances and the new hope that they have engendered, has outpaced the organ supply. As a result, approximately 10,000 Americans undergo expensive dialysis who could return to more normal lives with a transplanted kidney; 3,500 people await the gift of sight that an implanted cornea could provide; the lives of at least one hundred Americans, many of them children, depend upon the availability of a donated liver.

At present, only a small percentage of potential organ donations are made, even though the vast majority of the public has indicated a willingness to consent to organ donation by a deceased family member. To increase the availability of these desperately needed organs, the bill will ensure that hospitals will, in a sensitive manner, ask family members, after their loved one's death has been pronounced, whether they would consent to an organ donation on behalf of the decedent. The bill thereby reaffirms the essential role of families in these decisions but will afford family members the opor- tunity to make this generous decision if they see fit.

The bill properly gives to the Commissioner of Health broad regulatory authority to govern the manner in which hospitals perform this delicate responsibility, which will help ensure that the bill's mandate is carried out compassionately and carefully. Between now and the January 1,1986 effective date of the bill, the Commissioner intends to invite comment from all interested parties, including the Task Force on Life and the Law, as to how the bill should be implemented.

The bill is approved.

Mario M. Cuomo

New York State Mario M. Cuomo,
Governor