

Maintenance of Life Support in Donation Cases

Summary: A hospital must maintain life support for a reasonable time, even if a donor's family requests that life support be removed. Hospitals may not remove life support before consultation with the OPO to determine medical potential for donation. Once organs are determined to be viable, the hospital must maintain support until organs can be recovered.

When a hospital refers an individual at or near death to an organ procurement organization (OPO), the OPO must be provided time to evaluate the referral. The OPO "may conduct a reasonable examination to determine the medical suitability of a part that is or could be the subject of an anatomical fit. This examination is typically made in a relatively short period of time."¹

Timeliness is addressed in the act. "[A] hospital may, in accordance with a donor's declaration or advance health care directive, withdraw life support from the prospective donor if the procurement organization has not made a determination of donor potential within six (6) hours of the time the procurement organization is contacted by the hospital."

In cases where an advance directive is present, the R-UAGA unequivocally requires the hospital to continue life support. "If a prospective donor has a declaration or advance health care directive, unless the directive expressly states the contrary, hospitals must use measures necessary to allow a procurement agency to determine the medical suitability of an organ for transplantation or therapy by insuring that **life support is not withdrawn from the prospective donor before consultation with the appropriate procurement agency to determine medical potential for donation.**" The R-UAGA effectively clarifies the potential conflict between the desires of individuals to donate organs, and the desires of individuals not to have their lives unduly prolonged, by stating: "A general direction in a power of attorney for health care or advance health care directive that the patient does not wish to have life prolonged by the administration of life support systems should not be construed as an expression of a contrary intent."²

A hospital may only remove life support if two conditions are satisfied: (1) the removal of life support is "in accordance with a donor's declaration or advance health care directive," and (2) "the procurement organization has not made a determination of donor potential within six (6) hours from the time the procurement organization is contacted by the hospital."³

If the family wishes to sue the hospital for refusing to remove life support, the hospital could rely on Indiana state law which provides that a "health care provider is immune from civil liability for following a donor's unrevoked anatomical gift directive."⁴

In summary, life support cannot be withdrawn before consultation with the OPO, and the OPO must be provided adequate time to determine referral potential. Furthermore, the clear implication is that if the OPO determines the organs are viable, then life support may not be removed so that the OPO can prepare to recover organs. Reasonable time" can be defined as the average length of time it takes to recover organs, typically but not limited to 72 hours.

¹ Indiana Code § 29-2-16.1-15

² Indiana Code § 29-2-16.1-20(b)

³ Indiana Code § 29-2-16.1-20(b)

⁴ Indiana Code § 29-2-16.1-17

CMS Regulation

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

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

(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.**