Maximizing Community Partnerships:
First Person Authorization in DCD

TODAY'S PANEL



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DONATE LIFE CORE Center for Organ Recovery & Education
A Pledge for Life



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giftofhope® Organ & Tissue Donor Network

THE Alliance | *Equipping a Modern Profession of Lifesavers in Organ Donation & Transplantation*

Thursday, November 21, 2024, 2:00pm – 3:00pm ET

Continuing Education Information

Evaluations & Certificates

Nursing

The Organ Donation and Transplantation Alliance is offering **1.0 hours of continuing education credit** for this offering, approved by The California Board of Registered Nursing, Provider Number CEP17117. No partial credits will be awarded. CE credit will be issued upon request within 30 days post-webinar.

CEPTC

The Organ Donation and Transplantation Alliance will be offering **1.0 Category I CEPTC credits** from the American Board for Transplant Certification. Certified clinical transplant and procurement coordinators and certified clinical transplant nurses seeking CEPTC credit must complete the evaluation form within 30 days of the event.

Certificate of Attendance

Participants desiring CE's that are not being offered, should complete a certificate of attendance.

- Certificates should be claimed within 30 days of this webinar.
- We highly encourage you to provide us with your feedback through completion of the online evaluation tool.
- Detailed instructions will be emailed to you within the next 24 hours.
- You will receive a certificate via email upon completion of a certificate request or an evaluation
- Group leaders, please share the follow-up email with all group participants who attended the webinar.



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Need Assistance?

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Meet Our Moderator



Kiersten Smith BSN, RN, CPTC, LSSBB

Organ Procurement Coordinator

LIFESHARING™

Meet Our Presenters



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First Person Authorization and Potential Conflicts

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FIRST PERSON AUTHORIZATION (FPA)

- First Person Authorization – a ***gift*** made by a donor.
- Driver's License or other Anatomical Gift Registry
- 2018 Pennsylvania Donate Life Act recognized National Registries





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KEY PROVISIONS OF PENNSYLVANIA UNIFORM ANATOMICAL GIFT ACT (UAGA)

- THE UAGA's legal lineage flows from gift law, ***not*** informed consent.
  - Different than most medical laws
- The donor is presumed competent, sapient, and intentional.
- The gift is presumptively valid.

PRIMACY OF FPA

§ 8619. Use of driver's license or identification card to indicate organ or tissue donation.

- **A driver's license *"… is sufficient to satisfy all requirements for consent to organ and tissue donation."***
- **<u>No additional requirements or conditions or limitations may be imposed upon this consent.</u>**

PRIMACY OF FPA

§ 8613. Manner of executing anatomical gifts.
(e) Consent not necessary.

a. (e)(1): A donor's gift [via driver's license]

"…may not be revoked by the next of kin or any other person… The consent of any person at the time of the donor's death or immediately thereafter is not necessary to render the gift valid and effective."

PRIMACY OF FPA

§ 8613. Manner of executing anatomical gifts.
(d.1) Reliance.

- ***"[A] person may rely on a document of gift or amendment to a document of gift as being valid unless that person KNOWS that the document of gift was not validly executed or was revoked."***

- **Person means hospital, donee, or OPO.**
- **This is important later when we discuss immunities.**

PRIMACY OF FPA

§ 8613. Manner of executing anatomical gifts.
(e) Consent not necessary. (2) No Revocation by an Agent

a. ***"An agent, only if expressly authorized in writing in a [list of documents, e.g. POA] to override the decedent's instructions on the making of an anatomical gift, may revoke the decedent's gift".***

****Families have provided this in POA or other paperwork.*****

OTHER KEY PROVISIONS

> § 8611. Persons who may execute anatomical gift.
> (e) Rights of donee paramount.-- The rights of the donee created by the gift are paramount to the rights of others.

- **The gift vests immediately when made, even though delivery occurs at death.**

- **The rights of the donee are considered paramount over all others. This is important when we discuss conflicts with advance directives later.**



Common FPA Scenarios

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1

EXPIRED DRIVER'S LICENSE

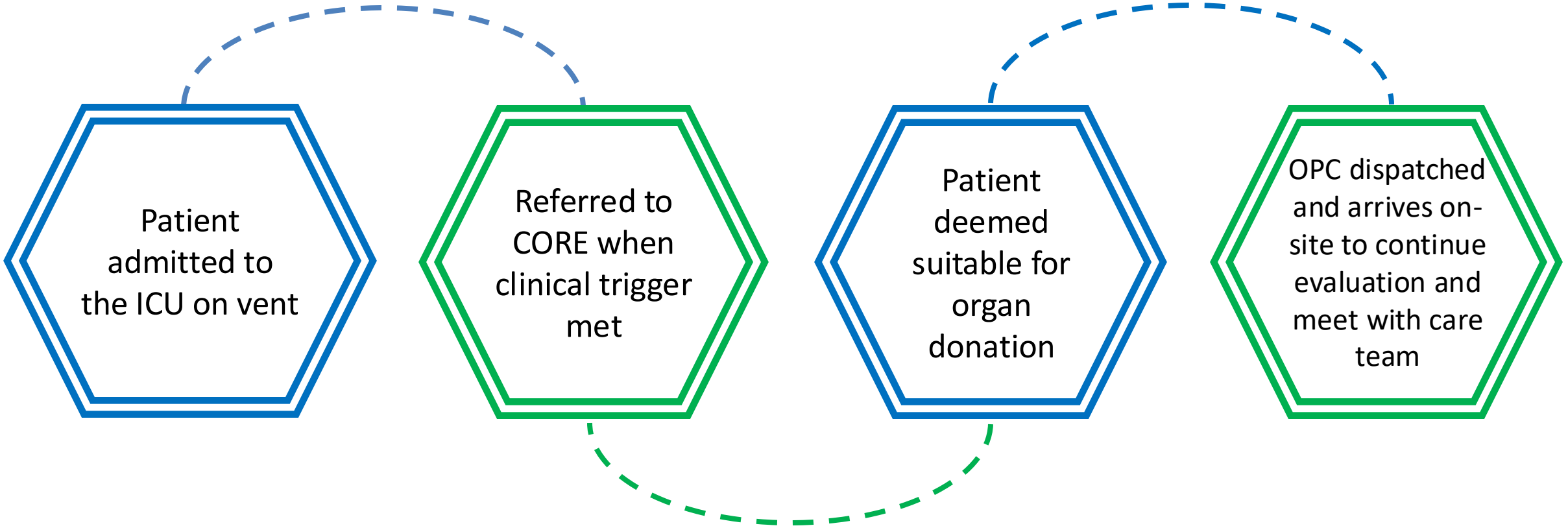
The statute is clear: expiration is irrelevant and does not void the gift.

> § 8613. Manner of executing anatomical gifts.
> (b.1) Other means.--If an anatomical gift is indicated on a driver's license or an identification card, the anatomical gift is **not** invalidated by revocation, suspension, expiration or cancellation of: (1) the driver's license…; or (2) the identification card…

2 FAMILY CONTENDS GIFT REVOKED

- **Designation is on the current, but family contends patient changed mind and revoked.**

Contested FPA Case Study



CORE reviews patient's registry records and learns the patient has designated themselves as an organ donor on their driver's license

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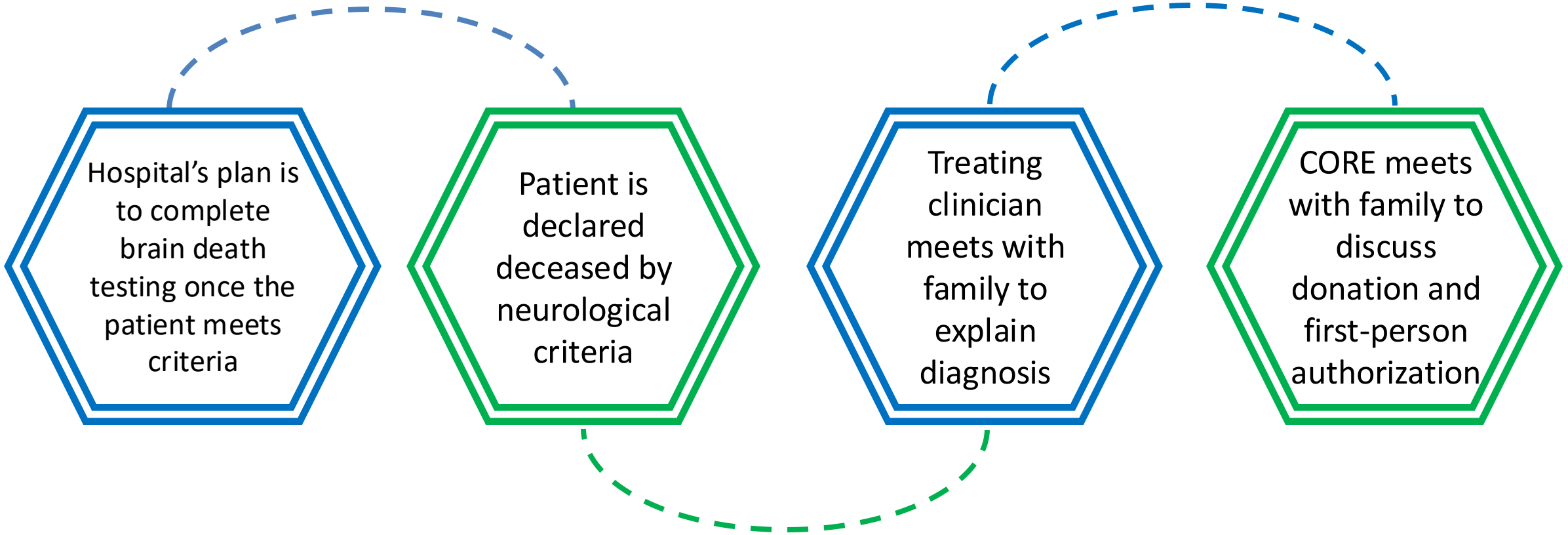
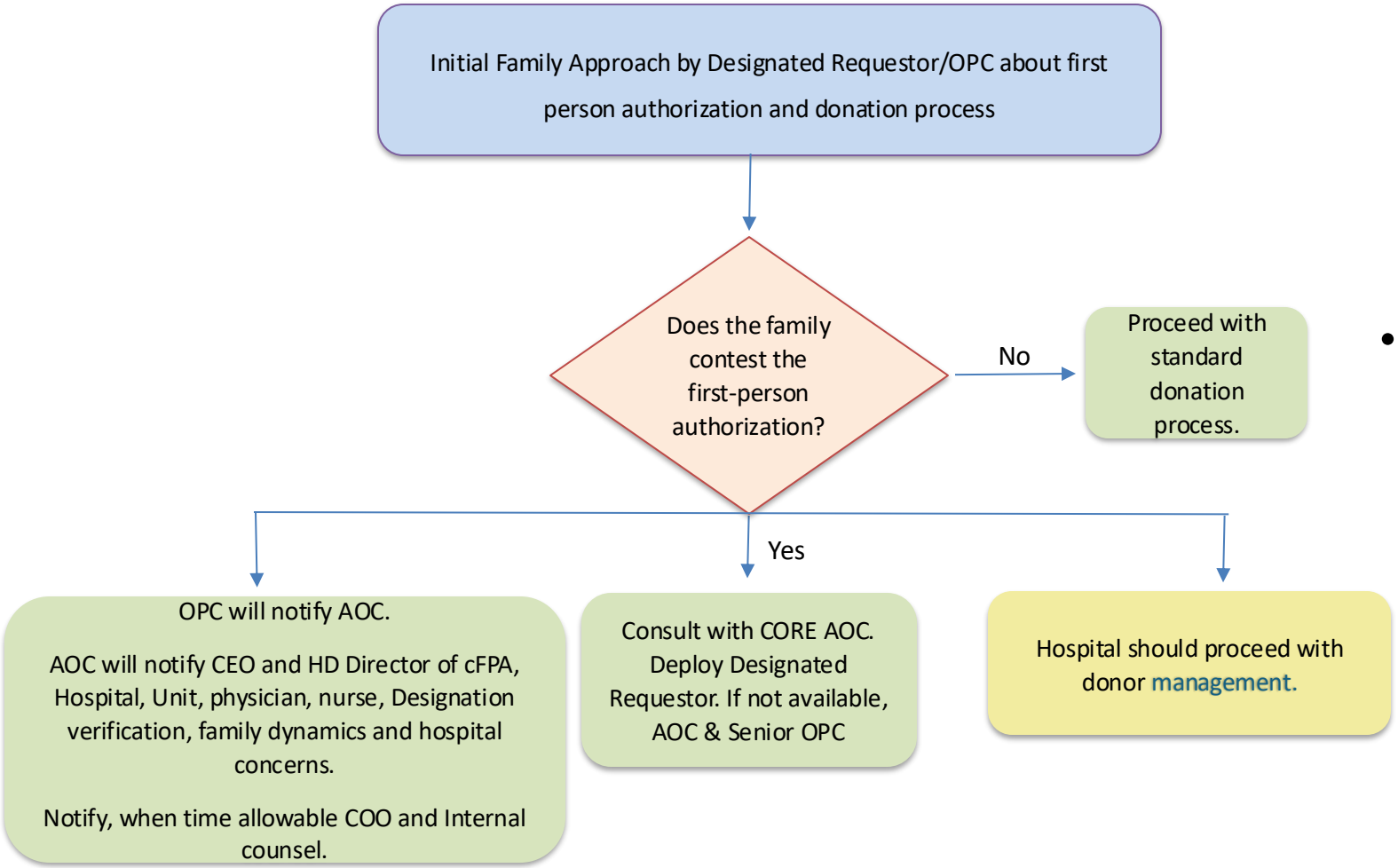
Contested FPA Case Study



During family approach, the family expresses that they do not want their loved one to be a donor and would like to remove ventilator support and stop treatment

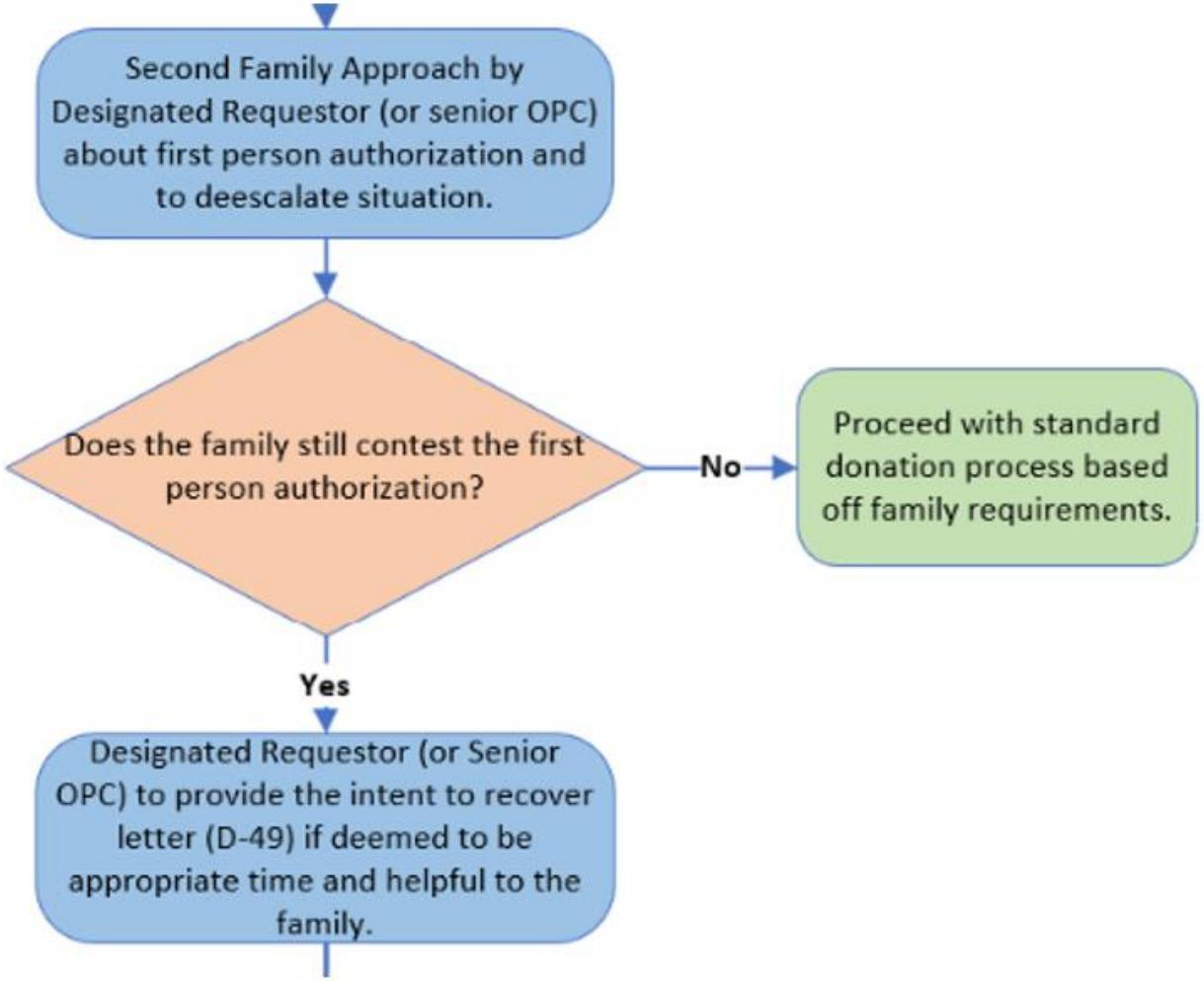
What to do when you have a cFPA?



- CORE has developed a mitigation process that works in collaboration with the hospital team to de-escalate and resolve the situation

De-Escalation Process

- CORE deploys a Designated Requestor
- Provide an *Intent to Recover Letter* to contesting family
- Provide a copy of the UAGA and the most recent copy of the donor designation



Hospitals Role in cFPA Process

1. RN or MD will notify hospital leadership of contested first-person authorization situation
2. Hospital Leadership may consider reviewing Statement of Agreement during this time
3. Treating team should continue with donor management

Hospital Communication Practice Notes

Be prepared to include hospital legal team

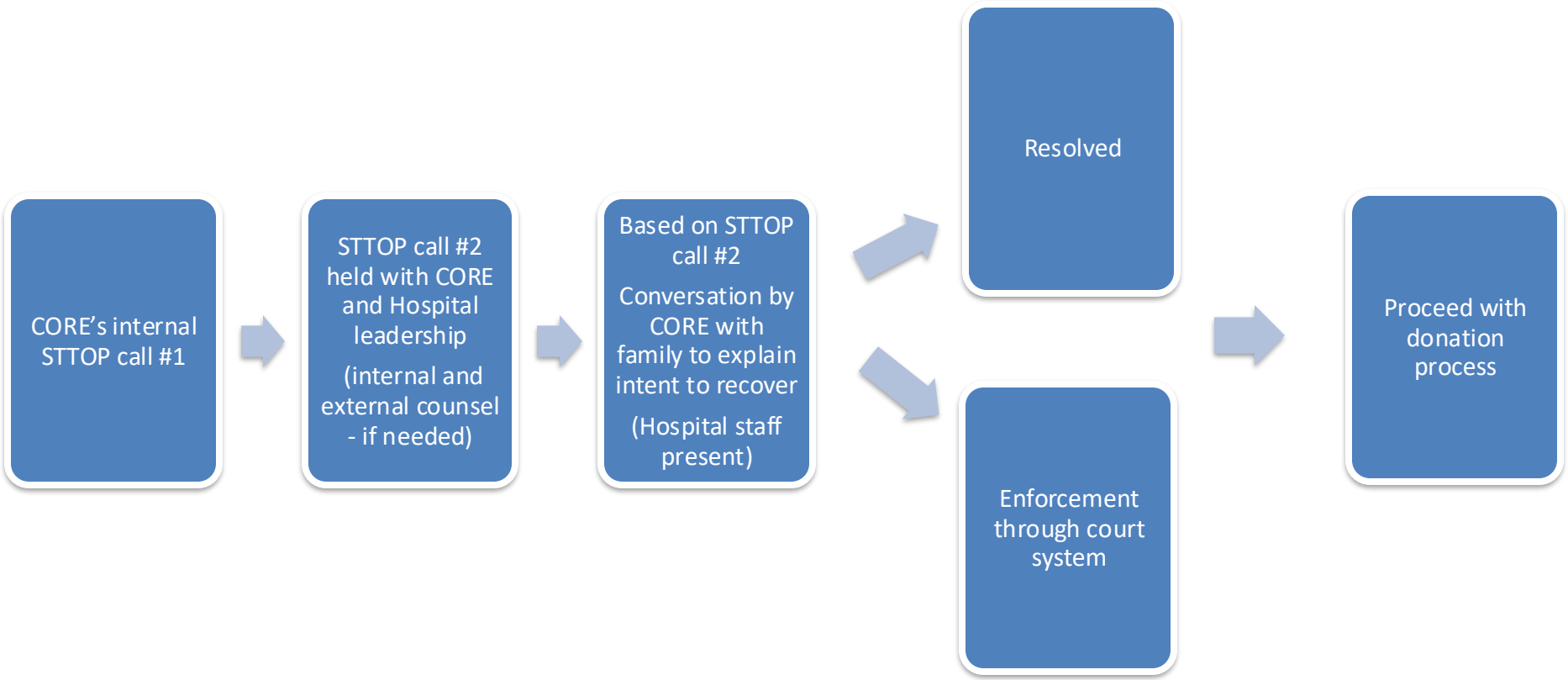
- *Risk management may not be the recommended approach.*

The hospital legal team or administration may discuss appropriate steps to challenge FPA with family

If the patient is in stable condition, the hospital may determine a grace period for recovery dependent on family dynamics

CORE and Hospital Leadership will ensure the safety and security for all involved.

De-Escalation Process



Key Takeaways

An expired Driver's License does not void the decision to be an organ donor

When a family is contesting FPA, communication and collaboration between CORE and the Hospital team is imperative

Safety is a priority

Origin of conflict is important for a better resolution







Honoring the decision:
Authorization for organ & tissue donation

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In Illinois

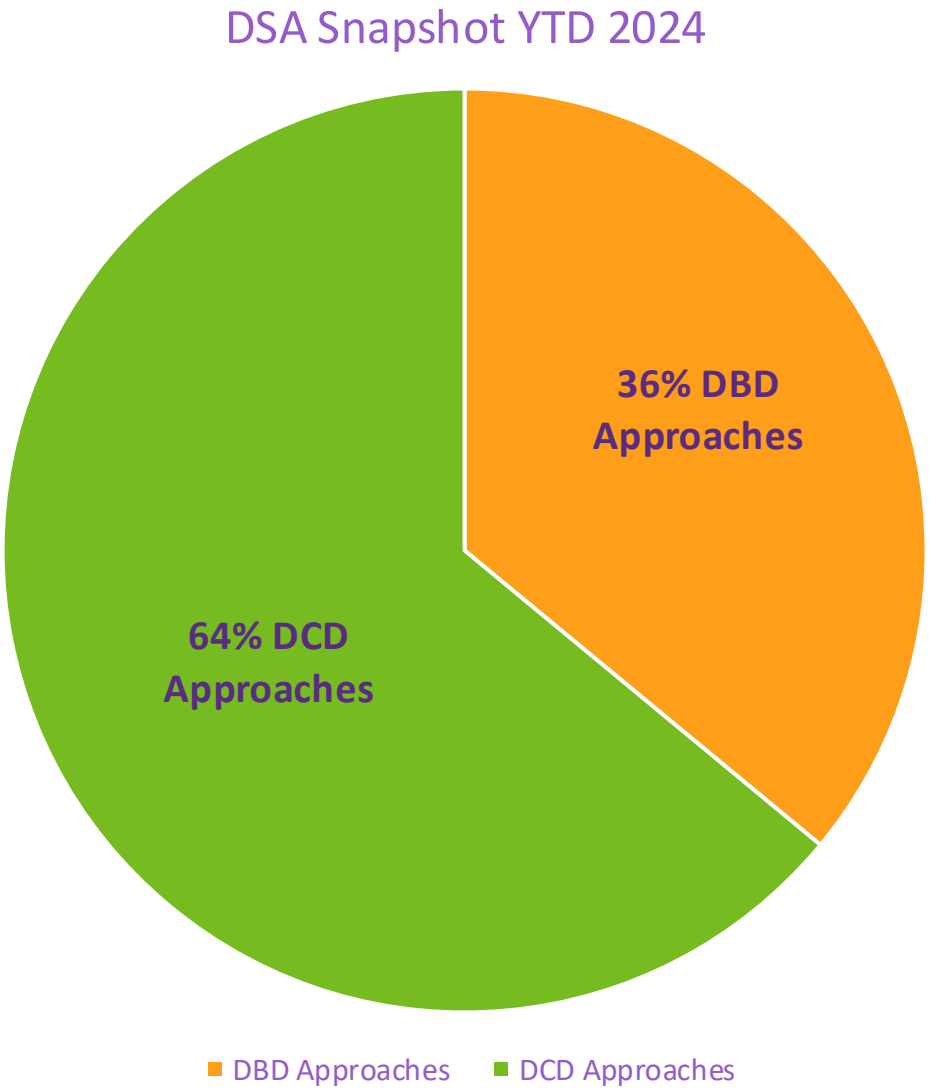
- **October 1992: Secretary of State creates Illinois Organ/Tissue Donor Registry**
- **The nation's largest by 2004**
  - Family must authorize donation regardless of individual's donor registration or end-of-life wishes
  - Public confusion about what it means
  - Approx. 20% of registered donors' wishes are overridden by family
- **June 2005: Governor signs "donor rights" legislation to establish FPA registry**
  - Advocates include Illinois Hospital Association, Illinois Nurses Association and Illinois State Medical Society
  - Overwhelming public and legislative support
- **January 1, 2006: Illinois becomes the 43rd state to honor an individual's registered decision to be a donor**

Our donation service area

- Since 2020: New records each year for donation, organs transplanted
- One of only eight donation service areas (DSAs) in the nation to achieve:
  - More than 500 donors in a single year
  - More than 10,000 organ donors and more than 30,000 organs donated for transplant since inception
- Larger OPOs/donation service areas like ours that have consistently performed well must continue maximizing every opportunity for donation

In our donation service area

Our region reflects the nation:
Much greater opportunity for life-saving organ donation after circulatory determination of death



Authorization for Donation, Registries, Regulatory & Legal Framework

- **Federal Uniform Anatomical Gift Act (UAGA)**
  - Enacted in 1968 and revised in 2006 and states donor's registration/FPA authorizes donation, and may not be revoked, whether brain death or circulatory death is declared
- **Attorneys general support: National Association of Attorneys General resolution (2010)**
  - State laws recognize "the individual's right to make an anatomical gift, cannot be amended or revoked by any other person, except with the donor's consent."
  - "[I]t is the obligation of all participants in the donation process—hospitals, doctors, procurement organizations, and family members—to comply with the law and to honor, and implement the decision of the donor."
- **Centers for Medicare and Medicaid Services (CMS) § 482.45 Condition of participation: Organ, tissue, and eye procurement**
  - Every hospital receiving Medicare funds must contact its designated OPO to evaluate all hospital deaths and imminent deaths for potential donation
    - Maintain patient's hemodynamic stability to maintain donation opportunity
    - Maintain the option during testing and placement donated organs and tissues

The opportunity has never been greater

- **Illinois donor registrations have topped 7 million**
- **Innovation and advancements in medicine, technology**
  - Ex-situ: “Heart in a box,” lung bio/liver/kidney, normothermic and hypothermic
  - In-situ: Normothermic regional perfusion (NRP)
  - Extubation in the OR – evolving best practice to leverage these technologies
- **Changing DCD criteria based on changing opportunity**
- **The result: More life-saving organs now recovered through DCD**
  - Years ago: Kidneys, liver only through DCD
  - Today: Kidneys, liver, pancreas, lungs, heart
  - This summer in our DSA: A DCD donor donated seven life-saving organs

Internal Communication & Training Plan



9/25: Honoring All Decisions PowerPoint Slides with Talking Points Available & Regulatory Support for Honoring All Decisions Handout Available

9/12, 9/14, 9/19 & 9/21: Organ Ops, DFA, & HD Staff Focus Group Discussions

10/2: E-mail communication sent to hospital administration and donation champions

10/11: Legal Counsel Presentation/ Q&A with Gift of Hope Staff

11/2: Legal Counsel Presentation/Q&A with Hospital Partners

12/5 & 12/7: Gift of Hope Staff Training for Organ Operations, Donation & Family Advocates & Hospital Development

- *Patient Care Conferences*
- *Clinical Factors*
- *Family Conversations*
- *Paperwork*
- *Escalation Protocol*

Communication & Collaboration are Key

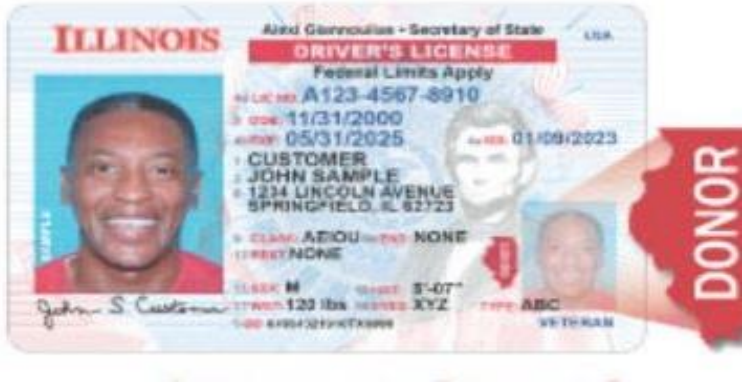






It is not against the law for a provider to extubate a patient who is a candidate for DCD and is a registered donor

Legally binding decision
to register to be a donor



OPO responsibility to honor patient's registered decision in collaboration with hospital

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UAGA & Illinois Law support OPO to honor patient's registered decision to donate



CMS CoP require hospitals to maintain donation opportunity

CMS
CENTERS FOR MEDICARE & MEDICAID SERVICES

FAQ from Hospital Partners: Illinois Legal Statues

Is a hospital/provider protected when they are delaying the withdrawal of a patient for donation purposes?

755 ILCS 50/5-45 Illinois Gift Act

(c) A person who acts or attempts in good faith to act in accordance with this Act:

- *is not liable for the act in a civil action, criminal prosecution, or administrative proceeding. Neither the person making an anatomical gift nor the donor's estate is liable for any injury or damage that results from the making or use of the gift.*
- *Any person that participates in good faith and according to the usual and customary standards of medical practice in the preservation, removal, or transplantation of any part of a decedent's body pursuant to an anatomical gift … shall have immunity from liability, civil, criminal, or otherwise, that might result by reason of such actions.*

Does a hospital have to medically support a patient if the family wants to discontinue pressor support?

755 ILCS 50/5-5 Illinois Gift Act

(c) A gift of all or part of a body authorizes any blood or tissue test or minimally invasive examination necessary to assure medical acceptability of the gift …

- *The hospital shall, to the extent possible and in accordance with any agreement with the organ procurement organization… take measures necessary to maintain the medical suitability of the part until the procurement organization has had the opportunity to advise the applicable persons as set forth in this Act of the option to make an anatomical gift or has ascertained that the individual expressed a contrary intent and has so informed the hospital.*

OUR GOALS

While our teams serve in different roles and have different responsibilities, we are all working toward the SAME goals.



Collaborate with Hospital Partners

to honor the decisions of all registered donors and all family wishes to move forward with donation



Compassionately Support Donor Families

throughout the entire donation process



Avoid Discussing Legal Ramifications

with frontline hospital staff as it pertains to honoring all decisions



Save & Enhance As Many Lives As Possible

through organ, tissue and eye donation

Timely Conversation Cues

- Family is having conversations around the end of patient's life
- Family understands death is imminent of injury is non-survivable
  - Ex: They would never want to live like this, funeral plans, palliative/hospice consult
- Family is considering withdrawal of treatment or de-escalation of care
- Care team brought up donation opportunity to family without Gift of Hope present
- Family mentions donation
- Patient becoming hemodynamically unstable; donation opportunity at risk
- Brain death declared, family updated with TOD and verbalize their loved one is dead

Revised On-Site Summary Note

HOSPITAL PLAN/NEXT STEPS:

FOLLOW UP FOR NEXT ONSITE:

FAMILY ASSESSMENT (Including LNOK information):

READINESS TRIGGERS: (If you answer YES, please explain)
Does family understand patient has suffered a non-survivable injury? YES/NO
Has withdrawal/brain death been discussed? YES/NO
Is there diagnostic testing or imaging pending? YES/NO
Is there a GOC meeting planned? YES/NO
Have any consults been made? YES/NO

HOSPITAL ASSESSMENT:

CLINICAL ASSESSMENT (vitals, neuros & sedation/pressors):

CODE STATUS:

INDIVIDUALS INCLUDED IN PCC (provide first and last names below next to role):

- **BEDSIDE RN:**
- **CHARGE RN:**
- **ATTENDING:**
- **PREFERRED METHOD OF COMMUNICATION WITH ATTENDING PHYSICIAN:**
- **IF ATTENDING WAS NOT CONTACTED, PLEASE PROVIDE REASON:**
- **CONSULTS/ANCILLARY:**

INFORMATION REVIEWED WITH AOC/RESOURCE:

Honoring all Decisions & The Life-Saving Impact

JANUARY 1, 2024 – NOVEMBER 17, 2024



33% increase in DCD FPA authorization rate from ‘23 (64%) vs. ’24 (97%)

Questions, comments & thoughts



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A Special Thanks to Our Presenter



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Q&A
QUESTIONS & ANSWERS