

# WEST VIRGINIA CODE: §16-19-14

## **§16-19-14. Rights and duties of procurement organization and others.**

(a) When a hospital refers an individual at or near death to a procurement organization, the organization shall make a reasonable search of the records of the Division of Motor Vehicles and any donor registry it knows of for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.

(b) The Division of Motor Vehicles shall allow a procurement organization reasonable access to information in the division's records to ascertain whether an individual at or near death is a donor. The Commissioner of the Division of Motor Vehicles shall propose legislative rules for promulgation pursuant to §29A-3-1 *et seq.* of this code to facilitate procurement agencies' access to records pursuant to this subsection.

(c) When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to ensure the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor. During the examination period, measures necessary to ensure the medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows that the prospective donor expressed a contrary intent.

(d) Unless prohibited by law, at any time after a donor's death, a person to whom a decedent's part passes under §16-19-11 of this code may conduct any reasonable examination necessary to ensure the medical suitability of the body or part for its intended purpose.

(e) Unless prohibited by law, an examination under subsection (c) or (d) of this section may include an examination of all medical and dental records of the donor or prospective donor.

(f) Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.

(g) Upon referral by a hospital under subsection (a) of this section, a procurement organization shall make a reasonable search for any person listed in §16-19-9 of this code having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information.

(h) Except as provided in §16-19-22 of this code, the rights of the person to whom a part passes under §16-19-11 of this code are superior to the rights of all others. A person may

accept or reject an anatomical gift, in whole or in part. Subject to the terms of the document of gift and this article, a person that accepts an anatomical gift of an entire body may allow embalming, burial, or cremation, and use of remains in a funeral service. If the gift is of a part, the person to whom the part passes under §16-19-11 of this code shall, upon the death of the donor and before embalming, burial, or cremation, cause the part to be removed without unnecessary mutilation.

(i) Neither the physician or the physician assistant who attends the decedent at death, nor the physician or the physician assistant who determines the time of death, may participate in the procedures for removing or transplanting a part from the decedent.

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

(k) A medical examiner shall cooperate with any procurement organization to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or education.

(l) A part may not be removed from the body of a decedent under a medical examiner's jurisdiction for transplantation, therapy, research, or education, nor delivered to a person for research or education, unless the part is the subject of an anatomical gift.

(m) Upon the request of a procurement organization, the medical examiner shall release to the procurement organization the name, contact information, name of the next of kin, and available medical and social history of a decedent whose body is under the medical examiner's jurisdiction. If the decedent's body or part is medically suitable for transplantation, therapy, research, or education, the medical examiner shall release the post-mortem examination results to the procurement organization. The procurement organization may not make a subsequent disclosure of the post-mortem examination results or other information received from the medical examiner unless the subsequent disclosure is relevant to transplantation, therapy, research, or education.

(n) If a hospital refers an individual whose death is imminent or who has died in a hospital to an organ procurement organization, and the organ procurement organization, in consultation with the individual's attending physician or a designee, determines based upon a medical record review and other information supplied by the individual's attending physician or a designee, that the individual may be a prospective donor; and the individual:

(1) Has not indicated in any document an intention to either limit the anatomical gifts of the individual to parts of the body which do not require a ventilator or other life-sustaining measures, or

(2) Has not indicated in any document an intention to deny making or refusing to make an anatomical gift; or

(3) Amended or revoked an anatomical gift in any document, the organ procurement organization may conduct a blood or tissue test or minimally invasive examination which is reasonably necessary to evaluate the medical suitability of a body part that is or may be the subject of an anatomical gift.

(o) Testing and examination conducted pursuant to subsection (n) shall comply with a denial or refusal to make an anatomical gift or any limitation expressed by the individual with respect to the part of the body to donate or a limitation the provision of a ventilator or other life-sustaining measures, or a revocation or amendment to an anatomical gift. The results of tests and examinations conducted pursuant to subsection (n) shall be used or disclosed only:

(1) To evaluate medical suitability for donation and to facilitate the donation process; and

(2) As otherwise required or permitted by law.

(p) A hospital may not withdraw or withhold any measures necessary to maintain the medical suitability of a body part that may be the subject of an anatomical gift until the organ procurement organization or designated requestor, as appropriate, has had the opportunity to advise the applicable persons under this article of the option to make an anatomical gift and has received or been denied authorization to proceed with recovery of the part.

(q) Subject to the individual's wishes under §16-19-11(c)(3) of this code, after an individual's death, persons who may receive anatomical gift pursuant to §16-19-11 of this code may conduct any test or examination reasonably necessary to evaluate the medical suitability of the body or part for its intended purpose.

(r) The provisions of this section may not be construed to preclude a medical examiner from performing an investigation of a decedent under the medical examiner's jurisdiction.