



ADMINISTRATIVE RULES OF MONTANA

37.106.405 MINIMUM STANDARDS FOR A HOSPITAL: ORGAN DONATION REQUESTS AND PROTOCOLS

- (1) This rule is adopted to implement Chapter 219, Laws of 1987, which amended both the Uniform Anatomical Gift Act, Title 72, chapter 17, MCA, and the Montana Health Care Facility Licensing Act, Title 50, chapter 5, part 2, MCA. Sections (2) through (5) of this rule paraphrase 72-17-211, MCA of the Uniform Anatomical Gift Act and are included here to clarify the requirements for hospitals in cases of patients who are suitable organ donors. For a full text of the Uniform Anatomical Gift Act, reference should be made to Title 72, chapter 17, MCA.
- (2) When, according to generally accepted medical standards, a patient is a suitable candidate for donation of body parts as defined in 72-17-102 (8), MCA, the hospital administrator or his/her designated representative shall communicate to the next-of-kin (as defined in (3) below) the option of donating all or any part of the patient's body and of the next-of-kin's option to decline. In addition to communicating such options, the hospital administrator or his/her designee must also request the next-of-kin to consent to an anatomical gift. The foregoing obligations of the administrator must be carried out unless the administrator or his/her designee:
 - (a) has actual notice of opposition to the gift by the decedent or the next-of-kin as defined in (3) below; or
 - (b) has reason to believe that an anatomical gift is contrary to the decedent's religious beliefs; or
 - (c) is aware of medical or emotional conditions under which the request would contribute to severe emotional distress.
- (3) "Next-of-kin" as provided in 72-17-201 (2), MCA, means one of the following persons in order of priority listed:
 - (a) the spouse;
 - (b) an adult son or daughter;
 - (c) either parent;
 - (d) an adult brother or sister; and
 - (e) a guardian of the person of the decedent at the time of death.
- (4) The medical record of each patient who dies in a hospital and who is determined (under the hospital's protocol established under (6) below) to be a suitable candidate for donation of body parts must contain an entry setting forth the following:
 - (a) the name and affiliation of the individual who communicated the option to donate to the next-of-kin and who made the request for anatomical gift under (1) above;

- (b) the name, relationship to the patient, and response of the individual to whom the option to donate was communicated and of whom the request for anatomical gift was made; and
 - (c) if no communication of an option or if no request for anatomical gift was made, the reason why no such request was made.
- (5) An anatomical gift by a next-of-kin may be made in writing or by telegraphic, recorded telephonic, or other recorded message.
- (6) By November 1, 1987, every hospital shall establish and have on file a written protocol that:
 - (a) assures identification of potential organ and tissue donors;
 - (b) assures that next-of-kin of patients who are suitable candidates for donation of body parts are made aware of their option to make an anatomical gift and are requested to consent to an anatomical gift of all or any part of the patient's body, unless one of the exceptions in (2) (a) , (2) (b) or (2) (c) applies;
 - (c) encourages discretion and sensitivity with respect to the circumstances, views, and beliefs of families of potential organ donors; and
 - (d) provides for notification of an appropriate federally approved organ procurement organization when potential organ donors are identified in the hospital.
- (7) Upon request, every hospital must make its adopted written protocol available to department personnel for their review.
- (8) The protocol must, at a minimum, in addition to the items in (6) above, address and provide for the following aspects of an organ donation notification/request/referral program:
 - (a) method(s) by which the public is notified that the hospital has an organ procurement program;
 - (b) determination of medical suitability of potential donors of body parts, including consideration of factors such as donor age, previous disease history, and presence of infection; and documentation of non-suitability of patients initially identified as potential donors;
 - (c) a training and educational program conducted on a yearly basis in conjunction with a procurement organization (or the equivalent) to instruct appropriate hospital staff or others to convey organ donation information to next-of-kin and to make requests from next-of-kin, which program consists of formal training, seminars, in-service workshops, or other training (or a combination thereof) leading to a knowledge of and familiarity with the following:
 - (i) general historical, medical, legal and social concepts involved in organ donation and transplantation;
 - (ii) psychological and emotional considerations when dealing with bereaved families;
 - (iii) religious, cultural, and ethical considerations associated with organ donation; and
 - (iv) procedures for approaching donors and/or donors' next-of-kin, including physician notification, timing and location of contact, content(s) of communication concerning donor cards, consent forms, donation costs (if any) , and actual requests for donation;

- (d) orientation and instruction on a yearly basis in conjunction with a procurement organization (or the equivalent) in the respective disciplines of hospital staff and/or other personnel who will or may be participating in the hospital's organ procurement program, such as chief of staff, attending physicians, nursing staff, social workers, clergy, or a team combining any of such persons; and
- (e) the following forms to be used by the hospital to document that next-of-kin of medically suitable patients have been notified of the option to consent to an anatomical gift and have been requested to authorize such donation(s) as required in (2) above (and, if any such contact has not been made, the reason(s) why not) :
 - (i) patient authorization;
 - (ii) consent of next-of-kin; and
 - (iii) notification of organ procurement organization(s) .
- (9) The hospital administrator shall designate a person or persons to represent him/her for the purpose of communicating to the next-of-kin the option of an anatomical gift and to make requests for anatomical gifts, in cases where the administrator is unable or will not be making such requests personally. Such persons shall receive the training specified in (8) above, and a list of such person(s) must be made available upon request to department personnel.
- (10) A person who acts in good faith in accordance with the terms of (2) of this rule is not liable for damages in any civil proceeding or subject to prosecution in any criminal proceeding that might result from this action.

Authorizing statute(s): Sec. 50-5-103 and 50-5-404, MCA

Implementing statute(s): Sec. 50-5-103, 50-5-204 and 50-5-404, MCA

History: NEW, 1987 MAR p. 1786, Eff. 10/16/87; TRANS, from DHES, 2002 MAR p. 185.