



Ohio Revised Code

Section 2108.24 Conflict between anatomical gift and health care directive.

Effective: August 17, 2021

Legislation: House Bill 7

(A) As used in this section:

(1) "Advance health-care directive" means a durable power of attorney for health care or a record signed by a prospective donor containing the prospective donor's direction concerning a health-care decision.

(2) "Health care decision" means any decision regarding the health care of the prospective donor.

(B) If a prospective donor has an advance health-care directive the terms of which are in conflict with the express or implied terms of a potential anatomical gift with regard to administration of measures necessary to ensure the medical suitability of a part for transplantation or therapy and the prospective donor is capable of resolving the conflict, subject to division (G) of this section, the prospective donor's attending physician shall confer with the prospective donor to resolve the conflict.

(C) If a prospective donor has an advance health-care directive the terms of which are in conflict with the express or implied terms of a potential anatomical gift with regard to administration of measures necessary to ensure the medical suitability of a part for transplantation or therapy and the prospective donor is incapable of resolving the conflict, one of the following shall apply depending on the circumstances:

(1) If the prospective donor has an agent, the agent shall, subject to division (G) of this section, act for the prospective donor to resolve the conflict.

(2) If the prospective donor does not have an agent, the individual or class of individuals determined in the following descending order of priority and subject to divisions (D), (E), (F), and (G) of this section shall act for the prospective donor to resolve the conflict:



- (a) The prospective donor's surviving spouse;
 - (b) The prospective donor's surviving adult children;
 - (c) The prospective donor's surviving parent or parents;
 - (d) The prospective donor's surviving adult siblings;
 - (e) The prospective donor's surviving adult grandchildren;
 - (f) The prospective donor's surviving grandparent or grandparents;
 - (g) A surviving adult who exhibited special care and concern for the prospective donor;
 - (h) The prospective donor's guardians of the person;
 - (i) The persons, other than those in divisions (C)(2)(a) to (h) of this section, to whom the prospective donor has assigned the right of disposition for the prospective donor's body pursuant to section 2108.70 of the Revised Code or who have the right of disposition for the prospective donor's body at the time of death as described in section 2108.81 of the Revised Code.
- (D) If an appropriate individual entitled to resolve a conflict between the terms of a prospective donor's advance health-care directive and the express or implied terms of a potential anatomical gift as described in division (C) of this section is not reasonably available to resolve the conflict, is incapacitated, or declines to resolve the conflict, the next priority individual or class of individuals specified in that division is authorized to resolve the conflict.
- (E) If at least one individual in a class of individuals entitled to resolve a conflict between the terms of a prospective donor's advance health-care directive and the express or implied terms of a potential anatomical gift is not reasonably available, is incapacitated, or declines to resolve the conflict, the conflict shall be resolved by the individual or individuals in the class who are reasonably available, not incapacitated, and willing to resolve the conflict.



(F) If individuals in a class of individuals determined in accordance with division (C)(2) of this section disagree on how a conflict between the terms of a prospective donor's advance health-care directive and the express or implied terms of a potential anatomical gift should be resolved, the opinion of the majority of the individuals who are reasonably available, not incapacitated, and are willing to resolve the conflict shall prevail.

(G) A conflict between the terms of a prospective donor's advance health-care directive and the express or implied terms of a potential anatomical gift with regard to the administration of measures necessary to ensure the medical suitability of a part for transplantation or therapy shall be resolved as expeditiously as possible. Information relevant to the resolution of the conflict may be obtained from the appropriate procurement organization and any other person authorized to make an anatomical gift for the prospective donor under section 2108.09 of the Revised Code. Before resolution of the conflict, measures necessary to ensure the medical suitability of the part shall not be withheld or withdrawn from the prospective donor unless withholding or withdrawing the measures is necessary for appropriate end-of-life care.