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Steve Miller, CAE, Virginia
Chief Executive Officer

March 21, 2025

RE: Filed House Bill, 1679

Dear Members of the Arkansas Senate:

On behalf of the Association of Organ Procurement Organizations (AOPO), I am writing in opposition to House Bill 1679. This legislation poses a threat to the many patients in Arkansas and across the nation awaiting a life-saving organ transplant and jeopardizes the legacies of the over 1.5 million Arkansas residents who have registered their decision to donate their organs after death to save lives.

AOPO is the national representative of 47 federally designated, non-profit Organ Procurement Organizations (OPOs) serving in the United States, Puerto Rico, and the U.S. Virgin Islands. Non-profit OPOs provide organ, tissue, and eye donation services to millions of Americans. Our mission is to save more lives by maximizing organ donation opportunities. We are pursuing the day when every donation opportunity results in a life saved.

Each day, in hospitals around the country, OPO staff offer care and support to the families of potential donors and know first-hand the tragedy and grief that accompany an unexpected loss of a loved one. On behalf of all OPO employees, we offer our condolences to the bill's sponsor, Representative Matt Brown, on the loss of his father.

We understand that decisions around donation can be difficult for surviving family members, but we also know the opportunity to donate can offer great comfort and solace to families. So, over recent decades, the donation community has worked closely with state legislators in all 50 states to create a structure of decision making that balances the interests of individuals and those of next-of-kin.

The Uniform Anatomical Gift Act

The Uniform Anatomical Gift Act, ("UAGA") which is the law in every state, the Virgin Islands and Puerto Rico provides two opportunities for authorization for organ donation. First, the UAGA establishes the individual as the primary decisionmaker for organ donation and allows an individual to make a legally binding anatomical gift prior to death. The gift can be made through any signed document, but the most prevalent mechanism is through registration in a donor registry, such as the Arkansas Donate Life Registry. The law specifically prohibits any other individual from changing that decision, in recognition of an individual's right to decide about their end of life care and disposition. The individual's expressed decision is binding, whether it is a gift or a refusal to give. In the United States, over half of adult Americans – in excess of 170,000,000 adults - have registered their decision to donate and the proposed legislation would strip them of the right to make this gift.

Second, if an individual has not decided either to make an anatomical gift or to refuse to make an anatomical gift, the UAGA provides that the individual's legal next of kin may authorize donation at the time of the individual's death.

Impact of HB 1679

HB 1679 undermines the intent of the UAGA and strips the individual of the right to make a decision about donation prior to death, the very right this section of the UAGA was intended to guarantee through codification in the law. Section 2(h) of the 1987 version of the UAGA provided that “an anatomical gift that is not revoked by the donor before death is irrevocable and does not require the consent or concurrence of any person after the donor’s death.” Revised Uniform Anatomical Gift Act (2008), at p. 30. In its commentary to the 2008 (the current version of the UAGA), the Uniform Law Commissions stated: “[t]he intent of that section was to assure donation finality for anatomical gifts made by donors prior to death.” Revised Uniform Anatomical Gift Act (2008), at p. 30.

In response to a practice of asking family members for authorization in cases of registered donors, the Uniform Law Commissioners amended that Section in 2008 explicitly stated that the practice “is inconsistent both with the 1987 Act and, more importantly, the respect due to donors who have made anatomical gifts during their lives.” Revised Uniform Anatomical Gift Act (2008), at p. 30. The Commissioners’ concern was twofold, that the practice undermined the individuals’ right to make an anatomical gift and that the practice would result in delays in donation, impacting the thousands of individuals on the waiting list, waiting for a life-saving gift. The Uniform Law Commissioners made clear that the provisions of the UAGA were intended to both make the individual the primary decisionmaker, and the decision irrevocable stating the UAGA is

“designed to state firmly the rule that a donor’s autonomous decision regarding the making of an anatomical gift is to be honored and implemented and is not subject to change by others. . . [and] not only continues the policy of making lifetime donations irrevocable but also is restated to take away from families the power, right, or authority to consent to, amend, or revoke donations made by donors during their lifetimes.” Section 8 addresses the possible tension between a donor’s autonomous decision to be a donor with the interest of surviving family members to make that decision. It addresses this tension by favoring the decision of the donor over the desires of the family.”
Revised Uniform Anatomical Gift Act (2008), at p. 30.

There is no precedent for this complete negation of a testamentary gift in any state, or indeed in any comparable body of law. Should HB 1679 pass, it will still be unlawful for a person to cancel their loved one’s willed gift of \$100 to a charity, but perfectly legal to cancel a loved one’s creation of a legacy of life, which comes at the cost of lives to people awaiting life-saving transplants. Moreover, the proposed HB 1679 directly contradicts other related provisions of Arkansas law providing the individual the right to make binding decisions around end of life care, see e.g., Arkansas Code Title 20-17. Public Health and Welfare § 20-17-202 (Declaration relating to use of life-sustaining treatment), 20-13-04 (individual’s right to make a Healthcare Power of Attorney). Arkansas law would not allow a family member to undermine other healthcare decisions made by an individual through a properly executed advanced directive; likewise, it should not be allowed in the circumstance of a properly executed donor designation.¹

At present, Arkansas’ Uniform Anatomical Gift Act, which was last updated in 2007² clearly states “a person other than the donor is barred from making, amending or revoking an anatomical gift” made by the donor”. Confusingly, while HB 1679 does not strike this language, it allows the family members and other specified people, to cancel the donor’s testamentary gift if the donor becomes “incapacitated”. In the laws which govern health care, particularly care for people at the end of life, a finding of “incapacity” usually causes caregivers to search out the individual’s wishes, not a race to overrule them. In fact, whether the individual expressed a desire for treatment, withdrawal of treatment, or removal of breathing tubes, Arkansas requires decisionmakers to follow the expressed wish of the incapacitated individual “A surrogate shall make a healthcare decision in accordance

¹ Religious leaders, too, echo this sentiment. In a 2019 speech, Pope Francis stated “For those who do not have a religious faith, the gesture towards needy brothers and sisters is called to be made on the basis of an ideal of selfless human solidarity.... [Believers]...are called to live it as an offering to the Lord, who has identified himself with those who suffer...Pope: [Organ donation manifestation of solidarity, no to commercialisation](#) - Vatican News. The Southern Baptist Leadership Conference agrees, encouraging “voluntarism regarding organ donations in the spirit of stewardship, compassion for the needs of others, and alleviating suffering.” Southern Baptist Convention. *Resolution on Human Organ Donations*. San Antonio. 1988.

² AR ST §20-17-1208 (a).

with the principal's individual instructions, if any".³ There is no other area of law where a person may cancel another individual's valid act, particularly their last wishes, due to the individual's "incapacity." The very purpose of the UAGA is to prohibit the result dictated by HB 1679.

The proposed legislation would adversely impact patients on the waiting list.

The proposed legislation would introduce uncertainties into the national system of donation and transplant and disadvantage Arkansas patients on the transplant waiting list. The system of donation and transplant is by design a national system and relies on consistency among states to be able to rely on the validity of anatomical gifts across state lines. HB1679 would disrupt this system by introducing inconsistencies and uncertainty, delay or prevent transplants and result in fewer organs donated, disadvantaging patients in Arkansas waiting for a transplant.⁴

Conclusion

HB 1679 directly conflicts with the intent of the UAGA as adopted in Arkansas, directly contravenes related Arkansas law establishing the primacy of an individual's right to make decisions about end of life care and will harm Arkansas patients on the transplant waiting list.

Respectfully submitted,



Dorrie Dils
President
Association of Organ Procurement Organizations

³ AR ST § 20-6-106.

⁴ AOPO supports the spirit of transparency and the desire for factual education that informs the second amendment to the Bill, requiring the federally designated non-profit organ procurement organization to report twice annually to the Health Committees of each legislative body. We believe that sharing the facts of organ donation and transplantation will encourage more life-saving gifts.