

DRAFT
FOR DISCUSSION ONLY

Uniform Determination of Death Act (20__)

Uniform Law Commission

~~June 9, 2023 Informal Session~~

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~~May 30~~ June 27, 2023

Uniform Determination of Death Act (20__)

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Uniform Determination of Death Act (20__)

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1 **Uniform Determination of Death Act (20__)**

2 **Section 1. Title**

3 This [act] may be cited as the Uniform Determination of Death Act (20__).

4 **Section 2. Definitions**

5 In this [act]:

6 (1) “Health care” means care or treatment or a service or procedure to maintain,
7 monitor, diagnose, or otherwise affect an individual’s illness, injury, or condition.

8 (2) “Health-care institution” means a facility or agency licensed, certified, or
9 otherwise authorized or permitted by other law to:

10 (A) provide health care in this state in the ordinary course of business; and

11 (B) ~~make~~permit a determination of death be made under Section 3(a)(2).

12 (3) “Health-care professional” means a physician or other individual licensed,
13 certified, or otherwise authorized or permitted by other law of this state to provide health care in
14 this state in the ordinary course of business or the practice of the physician’s or individual’s
15 profession.

16 (4) “Physician” means an individual authorized to practice medicine under [cite to
17 state law authorizing the practice of medicine] [or osteopathy under [cite to state law authorizing
18 the practice of osteopathy]].

19 (5) “Record” means information:

20 (A) inscribed on a tangible medium; or

21 (B) stored in an electronic or other medium and retrievable in perceivable
22 form.

23 (6) “State” means a state of the United States, the District of Columbia, Puerto

1 Rico, the United States Virgin Islands, or any other territory or possession subject to the
2 jurisdiction of the United States. The term includes a federally recognized Indian tribe.

3 (7) “Surrogate” means an individual ~~recognized~~authorized by other law of this
4 state to make a health-care decision on behalf of another individual.

5 **Comment**

6 The definitions of “Health-care professional” and “Physician” are taken verbatim from the draft
7 Uniform Health-Care Decisions Act for the May 30, 2023 Informal Session. The definitions of
8 “Health care,” Health-care institution,” and “Surrogate” are based on the draft Uniform Health-
9 Care Decisions Act for the May 30, 2023 Informal Session, modified for context. The
10 definitions of “Record” and “State” are standard Uniform Law Commission definitions.

11
12 **Section 3. Determination of Death**

13 (a) An individual is dead if the individual has sustained:

14 **Option 1**

- 15 (1) irreversible cessation of circulatory and respiratory functions; or
16 (2) irreversible cessation of all functions of the entire brain, including the brain
17 stem.

18 **Option 2**

- 19 (1) permanent cessation of circulatory and respiratory functions; or
20 (2) permanent
21 (A) coma,
22 (B) cessation of spontaneous respiratory functions, and
23 (C) loss of brainstem reflexes.

24 **End of Options**

25 (b) A determination of death under subsection (a)(2) must be made in accordance with
26 accepted medical standards.

1 **Comment**

2 Option 1 is the first sentence of Section 1 of the Uniform Determination of Death Act (1980), as
3 revised by the Committee on Style in April 2023. Option 2 is an alternative Option. Option 2
4 reflects comments that “permanent” (will not be reversed) may be preferable to “irreversible”
5 (cannot be reversed).

6
7 Both Options leave to other law the question of who is authorized to determine death, the time of
8 such determination, the consequences for such a determination, and other issues.

9
10 A State would adopt one (but only one) Determination of Death provision. The Options in this
11 draft are offered for discussion, recognizing a State would adopt one (and only one)
12 ~~Determination of Death~~ provisional alternative.

13
14 **[Section 4. Time to Gather**

15 After the individual is determined to be dead under Section 3(a)(2) but before
16 discontinuation of circulatory and respiratory support of the individual, the health-care institution
17 shall allow a reasonable time for those designated by the individual’s surrogate to gather at the
18 individual’s bedside.]

19 ***Legislative Note:** A state should include this section if it wishes to provide this time to gather.*
20 *The current draft does not specify whether the gathering would be in person, remote using*
21 *technology or a hybrid.*

22
23 **[Section 5. Notification**

24 (a) As used in this section “clinical evaluation to determine death” means a formal
25 process at a health-care institution to establish that an individual is dead, in accordance with
26 accepted medical standards, by:

27 (1) ~~(1)~~ circulatory and respiratory criteria under Section ~~(3)~~~~(a)~~(1); or

28 (2) ~~(2)~~ neurologic criteria under Section ~~(3)~~~~(a)~~(2).

29 (b) Before a health-care professional begins a clinical evaluation to determine death
30 under Section 3(a)(2), the health-care institution shall make a reasonable effort to notify the
31 individual’s surrogate that the evaluation will begin.]

1 **Legislative Note:** A state should include this section if it wishes to require this notification.

2
3 **[Section 6. Objection and Accommodation of Objection**

4 (a) ~~An~~The individual may object to a determination of death under Section 3(a)(2).

5 (b) An objection under subsection (a) must be ~~expressed~~documented in the individual's
6 medical records [or through information provided to the health-care institution by ~~an~~the
7 individual's surrogate-].

8 (c) A health-care institution shall adopt a policy in a record that sets forth the reasonable
9 efforts it will make to accommodate an objection under subsection (a). The policy must:

10 (1) require the institution to comply with the individual's choice that a
11 determination of death not be made under Section 3(a)(2); and

12 (2) provide that an objection must be made before beginning the clinical
13 evaluation for the determination of death under Section 3(a)(2).]

14 **Legislative Note:** A state should include this section if it wishes to allow for ~~this~~
15 ~~accommodation.~~objections and accommodations of those objections.

16
17 **Section 7. Uniformity of Application and Construction**

18 In applying and construing this uniform act, a court shall consider the promotion of
19 uniformity of the law among jurisdictions that enact it.

20 **[Section 8. Severability**

21 If a provision of this [act] or its application to a person or circumstance is held invalid,
22 the invalidity does not affect another provision or application that can be given effect without the
23 invalid provision.]

24 **Legislative Note:** Include this section only if the state lacks a general severability statute or a
25 decision by the highest court of the state stating a general rule of severability.

26
27 **Section 9. Repeals; Conforming Amendments**

1 (a) [The Uniform Determination of Death Act] is repealed.

2 (b) . . .

3 **Legislative Note:** *A state that has enacted the Uniform Determination of Death Act or*
4 *comparable statute should repeal it.*

5
6 *A state should examine its statutes to determine whether repeals or conforming revisions are*
7 *required by ~~...~~....*

8

9 **Section 10. Effective Date**

10 This [act] takes effect . . .