

STATE OF OHIO



DEPARTMENT OF REHABILITATION  
AND CORRECTION

SUBJECT:	PAGE <u>1</u> OF <u>5</u>
<b>Organ Donation</b>	NUMBER: 68-MED-09
RULE/CODE REFERENCE: 42 USC § 273 <i>et seq</i> ; 42 C.F.R. § 121.1 <i>et seq</i> .	SUPERSEDES: 68-MED-09 dated 01/02/15
RELATED ACA STANDARDS:	EFFECTIVE DATE: September 15, 2016
	APPROVED: 

**I. AUTHORITY**

This policy is issued in compliance with Ohio Revised Code 5120.01 which delegates to the Director of the Department of Rehabilitation and Correction the authority to manage and direct the total operations of the Department and to establish such rules and regulations as the Director prescribes.

**II. PURPOSE**

The purpose of this policy is to establish the process for organ donations by inmates during their life and upon their death and related issues.

**III. APPLICABILITY**

This policy applies to all persons employed by or under contract with the Ohio Department of Rehabilitation and Correction (DRC) and all offenders incarcerated in institutions operated by the DRC. This policy is not applicable to the Division of Parole and Community Services (DPCS).

**IV. DEFINITIONS**

**Advanced Level Provider (ALP)** - A medical professional who is approved to practice as a physician, an advanced practice nurse under Ohio Revised Code section 4723.43, or a physician's assistant under Ohio Revised Code section 4730.

**Family Member** - For purposes of this policy, a parent, brother, sister, spouse, son, daughter, grandparent, grandchild, aunt, uncle, niece, nephew, or first cousin of the inmate. In accordance with applicable law, adoptive or step-relationships shall be the same as natural relationships. Proof may be required to establish family member status, including but not limited to, birth certificates, marriage certificates, and sworn statements.

**Living Organ Donation** - For purposes of this policy, an inmate's conscious, voluntary and knowing decision to undergo elective organ donation surgery, with the expectation of that inmate's full recovery from such surgery. Living organ donation does not mean an inmate who has been declared, by an

appropriately trained and qualified medical professional, to have experienced brain or cardiac death, but whose remaining organs may remain viable for potential donation.

## **V. POLICY**

It shall be the policy of the Ohio Department of Rehabilitation and Correction (DRC) to provide procedural guidelines which clarify staff responsibilities of inmate organ donation.

## **VI. PROCEDURES**

### **A. Organ Donation**

1. Inmate participation in organ donation is strictly voluntary and the consent for such donation is the sole responsibility of the inmate. No special consideration or treatment shall be provided to an inmate for participation in organ donation, and no repercussion shall result from nonparticipation.
2. DRC and its agents and employees shall not be held responsible for any complications or financial responsibilities arising out of or related to organ donations, except as specifically provided in this policy.
3. DRC acknowledges that under the terms of the National Organ Transplant Act (NOTA or the Act) and the applicable federal regulations, human organ procurement and transplantation may be performed only by Organ Procurement Organizations (OPOs) and hospital transplant centers which are approved by U.S. Department of Health and Human Services (HHS) and which are also members of the Organ Procurement and Transplantation Network (OPTN) and/or the United Network for Organ Sharing (UNOS). All OPOs and hospital transplant centers must also agree to comply with the terms of the Act, the applicable federal regulations, and the standards and policies adopted by OPTN and/or UNOS.
  - a. To address the nation's critical organ donation shortage and improve the organ matching and placement process, in 1984, Congress passed the NOTA (*See* 42 USC § 273 *et seq.*).
  - b. All organ donation and transplantation in the United States must comply with the provisions of the Act, federal regulations promulgated under the Act (42 C.F.R. § 121.1 *et seq.*), and standards and policies adopted by the UNOS. UNOS is the organization selected by the HHS to administer the nationwide OPTN created by the Act.
4. Regardless of the wishes of the inmate or any of the inmate's family members or next of kin regarding living organ donation or donation after death, and regardless of any prior approval DRC may have given regarding an inmate's request for organ donation, the ultimate decision on whether the inmate's organ may be donated and accepted for human transplantation will be made solely by the appropriate OPO and/or hospital transplant center after consideration of the terms of the Act, the federal regulations, the OPTN/UNOS standards or policies, and any other matters deemed germane by that OPO or hospital transplant center.

5. DRC expressly reserves the right to rescind any prior approval for an inmate to be an organ donor if the appropriate OPO and/or hospital transplant center determines and advises DRC that the proposed donation is not medically advisable, or not feasible, and/or it may violate the terms of the Act, the federal regulations or any OPTN/UNOS standards or policies.
6. If an inmate wishes to donate organs after his/her death, the inmate may indicate this by completing the Organ Donation Form (DRC5329 or electronic equivalent).
  - a. An inmate who is sentenced to death and then executed pursuant to Ohio law, however, may or may not be eligible for certain post-execution donation of organs, tissue or blood, since such donations may not be medically feasible or acceptable.
  - b. DRC is not, and shall not be, involved in making any such post-execution donation eligibility determinations.
7. While incarcerated, inmates may be considered for limited living organ donation to family members only, if the circumstances do not create extreme security concerns.
  - a. The decision to allow an inmate to be considered for limited living organ donation to a family member shall be made by the institution managing officer/designee.
  - b. If the inmate is serving a sentence of death, such decision shall be made by the institution managing officer/designee, but only after consultation with the Director of DRC.
  - c. Living organ donation to someone who is not a family member, to an anonymous recipient, to a known recipient, or to any other person shall generally not be permitted by this policy.
    - i. The Director of DRC, after consultation with the institution managing officer/designee, may permit such donation under extraordinary circumstances.
    - ii. If permitted, such donation recipient shall be treated as if they were an inmate's family member, as that term is used in this policy.
8. If an inmate wishes to donate an organ to a family member, the request must be made by completing the Living Organ Donation Form (DRC5335 or electronic equivalent).
  - a. In order to proceed with a living organ donation, the inmate must furnish the institution managing officer/designee with official written notification establishing that the inmate's family member is an organ recipient candidate currently listed on a national organ transplant waiting list maintained or approved by UNOS and/or OPTN. Absent DRC's receipt of such official written notification, the inmate will not be permitted to proceed with any of the preliminary evaluations, assessments, tests or other processes used under this policy to determine or identify donor/recipient compatibility.
  - b. For any inmate currently serving a sentence of death and who has an execution date scheduled by Order of the Ohio Supreme Court, DRC shall provide that inmate and

his/her attorney of record with a copy of both this policy and Living Organ Donation Form (DRC5335). Such inmate may choose to complete DRC5335 or electronic equivalent and timely provide the required official written notification establishing that a family member is an organ recipient candidate currently listed on a national organ transplant waiting list maintained or approved by UNOS and/or OPTN.

- c. Upon receipt of both a fully executed Living Organ Donation Form (DRC5335 or electronic equivalent) and the required official written notification of national organ transplant waiting list status from the inmate, DRC shall inform the inmate and the inmate's attorney of record of the following matters:
  - i. The time period for both the inmate and the inmate's family member to complete all of the necessary evaluations, assessments and physical and psychological tests for living organ donation generally may take as long as four to six months, prior to the identification of donor/recipient compatibility and the scheduling of organ donation and transplantation surgery.
  - ii. The living organ donation and transplantation surgery must be completed at least one hundred (100) calendar days before the inmate's scheduled execution date, if any.
  - iii. If the living organ donation and transplantation surgery is not scheduled at least one hundred (100) calendar days before the scheduled execution, then the Director of DRC, in his/~~or~~her sole discretion, reserves the right to decline the inmate's request for living organ donation to a family member.
- d. Both the inmate and his/her family member potential organ recipient shall complete all necessary steps and actions to ensure that the living organ donation surgery is performed on the inmate at least one hundred (100) calendar days before the inmate's scheduled execution date, unless a shorter time period is permitted at the sole discretion of the Director of DRC.
- e. By completing the Living Organ Donation Form (DRC5335 or electronic equivalent) and participating in this process, the inmate who wishes to proceed with living organ donation to a family member, in accordance with the terms of this policy, acknowledges and agrees that he/she:
  - i. Is acting consciously, voluntarily and knowingly; and
  - ii. Has not received and will not receive any special consideration or benefit for his/her actions under this policy; and
  - iii. Has no current or future expectation of receiving any special consideration or benefit for his/her actions under this policy.
9. If an inmate completes the Living Organ Donation Form (DRC5335 or electronic equivalent) and furnishes the required official written waiting list notification in a timely

manner, then the transplant administrator for the inmate's potential family member organ recipient shall promptly provide written documentation of need to the managing officer/designee, but only after obtaining appropriate prior authorization from the recipient. This documentation of need must specify the preliminary evaluations, assessments and tests that will identify donor/recipient compatibility.

- a. The initial compatibility test shall be done by DRC.
  - b. If these tests document donor/recipient compatibility, the transplant administrator for the organ recipient and the transplant administrator for the Ohio State University Medical Center (OSUMC) shall advise the managing officer/designee.
10. The transplant administrator for the recipient shall then notify the managing officer or designee of the need for subsequent testing.
  11. If necessary, the inmate shall be transported to the Franklin Medical Center (FMC) for completion of any subsequent test required. Results of these tests shall be forwarded to the OSUMC/recipient transplant administrators.
  12. When all tests are completed and compatibility is established, the inmate may be admitted to OSUMC for the surgical procedure. Note: All inmate organ donations shall be performed at OSUMC.
    - a. All medical and custody costs shall be the sole responsibility of the inmate and/or organ recipient.
    - b. If the recipient has been admitted to another facility, the recipient transplant administrator will be responsible for transport of the organ.

**Related Department Forms:**

Organ Donation	DRC5329
Living Organ Donation	DRC5335