

**RULES OF  
DEPARTMENT OF COMMUNITY HEALTH  
HEALTHCARE FACILITY REGULATION**

**AMEND CHAPTER 290-5-50**

**AND**

**REPLACE WITH NEW CHAPTER 111-8-05**

**RULES AND REGULATIONS FOR ANATOMICAL GIFTS**

**SYNOPSIS OF PROPOSED RULE CHANGES**

**STATEMENT OF PURPOSE:** The Department of Community Health proposes to amend the Rules for Anatomical Gifts by replacing the Chapter number, 290-5-50 with a new Chapter number, 111-8-05. This change is necessary to reflect that the receipt and use of anatomical gifts by licensed facilities are subject to regulation by the Department of Community Health rather than the Department of Human Resources, which has since been renamed as the Department of Human Services. These rules are being proposed pursuant to the authority granted the Department of Community Health in O.C.G.A. §§ 31-2-5, 31-2-6 and 31-2-7.

The proposed rules restate existing rules applicable to licensed facilities involved with anatomical gifts which are the responsibility of the Department of Community Health, Healthcare Facility Regulation Division. In the formulation of the proposed new rules, the Department has considered the economic costs associated with the regulations and the impact on small businesses in the state. To the extent possible, the proposed rules do not impose excessive regulatory costs on the regulated entities while supporting the quality of care being delivered and the health and safety of the participants receiving care.

**MAIN FEATURES OF THE PROPOSED RULES:** The proposed Rules for Anatomical Gifts, Chapter 111-8-05, set forth the existing standards for determining permissible donees, donations, requests to donate and disposition of anatomical gifts. These proposed Rules do not change the existing rules except to replace the Chapter number, the name of the Department and the Centers for Medicare and Medicaid and update legal references throughout. The proposed rules include the following features:

- Restatement of existing Legal Authority in Rule 111-8-05-.01 for handling Anatomical Gifts.
- Restatement of existing Organization and Purpose in Rule 111-8-05-.02.

- Substitution of the Department of Community Health for the Department of Human Resources in the definition of the Department and the Centers for Medicare and Medicaid Services for the Health Care Financing Administration in the definition of Organ Procurement and the restatement of all existing Definitions in Rule 111-8-05-.03.
- Restatement of existing provisions for Permissible Donees and Purposes for Anatomical Gifts in Rule 111-8-05-.04.
- Restatement of existing provisions for Permissible Donors in Rule 111-8-05-.05 .
- Restatement of existing provisions for Hospital Admissions in Rule 111-8-05-.06.
- Restatement of existing requirements for Routine Requests on or Before the Occurrence of Death in Hospitals in Rule 111-8-05-.07.
- Restatement of existing requirements for Certain Physicians not to Participate in Removing for Transplanting Parts in Rule 111-8-05-.08.
- Restatement of existing requirements for Deliver of Donations from Receiving Hospitals to Permissible Donees in Rule 111-8-05-.09.
- Restatement of existing requirements for Suitability of Anatomical Gifts in Rule 111-8-05-.10.
- Restatement of existing requirements for Training in Rule 111-8-05-.11.
- Inclusion of updated references to the Official Code of Georgia Annotated and cross-references to other rules.

**RULES  
OF  
DEPARTMENT OF ~~HUMAN~~  
~~RESOURCES~~ COMMUNITY HEALTH  
~~PUBLIC HEALTH~~  
HEALTHCARE FACILITY  
REGULATION**

**CHAPTER ~~290-5-50~~111-8-05  
ANATOMICAL GIFTS**

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### **290-5-50111-8-05-.01 Legal Authority.**

The legal authority for this chapter, unless otherwise noted, is "The Georgia Anatomical Gift Act," O.C.G.A. 44-5-140.

Authority O.C.G.A. Secs. 31-2-5, 31-2-6, 31-2-7 and 44-5-140. **History.** Original Rule entitled "Legal Authority" was filed on June 22, 1987; effective July 12, 1987. **Repealed:** New Rule of same title adopted. F. Nov. 20, 1992; eff. Dec. 10, 1992.

### **290-5-50111-8-05-.02 Organization and Purpose.**

The purpose of these rules is to establish the requirements of "The Georgia Anatomical Gift Act" as it applies to the practices, procedures and criteria for making and routinely requesting anatomical gifts in hospitals.

Authority O.C.G.A. Secs. 44-5-143(g)(h), 143.1(g)(h). **History.** Original Rule entitled "Organization and Purpose" was filed on June 22, 1987; effective July 12, 1987. **Repealed:** New Rule of same title adopted. F. Nov. 20, 1992; eff. Dec. 10, 1992.

### **290-5-50111-8-05-.03 Definitions, Unless Otherwise Indicated.**

\_(1) "Anatomical Gift" or "Gift" means a donation of all or part of a human body to take effect upon or after death.

\_(2) "Bank or Storage Facility" means an organ procurement organization or any other entity licensed or approved in the State of Georgia as a tissue bank, eye bank, or clinical laboratory which procures, Stores, or processes human tissue designed to be used for medical purposes in human beings.

\_(3) "Decedent" means a deceased individual and includes a stillborn infant or fetus.

\_(4) "Department" means the Georgia Department of ~~Human Resources~~Community Health.

\_(5) "Document of gift" means a donor card, a statement attached to or imprinted on a motor operator's or chauffeur's license, a will, or other writing used to make an anatomical gift.

\_(6) "Donee" means the person that receives an anatomical gift.

\_(7) "Donor" means an individual who makes a gift of all or part of his body.

\_(8) "Enucleator" means an individual who is authorized to remove eyes.

\_(9) "Eye Bank" means a facility which is maintained and operated for the extraction, removal, care, storage, preservation, and use of human eyes or parts thereof for purposes of sight preservation or restoration, medical education, instruction pertaining to sight

preservation, or restoration, or research and which is licensed by the Department for such purposes.

\_(10) "Hospital" means a hospital licensed, accredited, or approved under the laws of any state, although not required to be licensed under state laws, and includes hospitals operated by the United States government or by the state or a subdivision thereof.

\_(11) "Hospital Administrator" means the person in charge of a hospital.

\_(12) "Organ" means any heart, lung, pancreas, kidney, or liver.

\_(13) "Organ Procurement Organization" means an organization located in the State of Georgia that is designated by the ~~Health Care Financing Administration~~Centers for Medicare and Medicaid Services of the federal Department of Health and Human Services under the end stage renal disease facility regulations to perform or coordinate the performance of all of the following services:

\_(a) procurement of donated kidneys;

\_(b) preservation of donated kidneys;

\_(c) transportation of donated kidneys; and

\_(d) maintenance of a system to locate prospective recipients of procured organs. An organ procurement organization may also perform those services for extrarenal vital organs and includes any organization certified by the federal Department of Health and Human Services as an organ procurement organization.

\_(14) "Part" means organs, tissues, eyes, bones, arteries, blood and other fluids, and any other portions of a human body. The term "part" also means a heart pacemaker.

\_(15) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust partnership or association, or any other legal entity.

\_(16) "Physician" or "Surgeon" means a physician or surgeon licensed or authorized to practice under the laws of any state.

\_(17) "State" means any state, district, commonwealth, territory, insular possession, and any other area subject to the legislative authority of the United States of America.

\_(18) "Technician" means an individual authorized by a bank or storage facility to remove or process an anatomical gift, excluding the removal of organs for transplantation.

|(19) "Tissue Bank" means a facility which provides through its ownership or operation for the storage of human or animal tissues designed to be used for medical purposes in human beings and which is licensed by the department as a clinical laboratory.

Authority O.C.G.A. Secs. 31-1-6, 31-22-1(2), 31-23-1(1), 44-5-142, 44-5-143(h), 44-5-143.1(h). **History.** Original Rule entitled "Definitions" was filed on June 22, 1987; effective July 12, 1987. **Amended:** Filed August 24, 1987; effective September 13, 1987. **Amended:** Rule entitled "Definitions Unless Otherwise Indicated." F. Jun. 22, 1989; eff. Jul. 12, 1989. **Repealed:** New Rule of same title adopted. F. Nov. 20, 1992; eff. Dec. 10, 1992.

### **290-5-50111-8-05-.04 Permissible Donees and Purposes of Anatomical Gifts.**

The following persons may become donees of anatomical gifts for the purposes stated:

|(a) Any hospital, surgeon, or physician, for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation;

|(b) Any accredited medical or dental school, college, or university for education, research, advancement of medical or dental science, or therapy;

|(c) Any bank or storage facility, for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation; or

|(d) Any specified individual, for therapy or transplantation needed by him.

Authority O.C.G.A. Sec. 44-5-144. **History.** Original Rule entitled "Permissible Donees and Purposes of Anatomical Gifts" was filed on June 22, 1987; effective July 12, 1987. **Repealed:** New Rule of same title adopted. F. Nov. 20, 1992; eff. Dec. 10, 1992.

### **290-5-50111-8-05-.05 Permissible Donors.**

|(1) Any individual who is 18 years of age or older and of sound mind may give all or any part of his body for any purposes specified in Rule .04 of this Chapter, the gift to take effect upon death.

|(2) The parents, legal guardians, or other persons authorized or obligated to dispose of the body may, unless otherwise directed by a will, give all or any part of the body of a person who is under 18 years of age for any purpose specified in Rule .04 of this Chapter, the gift to take effect upon death.

|(3) Persons listed at Rule .07(1)(c)1. and .07(1)(c)2. of this Chapter may give all or any part of a decedent's body for any purposes specified in Rule .04 of this Chapter.

Authority O.C.G.A. Secs. 44-5-143(a), (b); 44-5-143.1(a)(b). **History.** Original Rule entitled "Permissible Donors" was filed on June 22, 1987; effective July 12, 1987. **Repealed:** New Rule of same title adopted. F. Nov. 20, 1992; eff. Dec. 10, 1992.

## **290-5-50111-8-05-.06 Hospital Admissions.**

\_(1) Upon admission to any hospital, a person, at his request, may make an expression of his intention regarding the disposition of his body. Such expression shall be deemed to be sufficient notice under O.C.G.A. 44-5-140 and this Chapter not to be contravened by opposition from persons listed in Rule .07(1)(c)1. and .07(1)(c)2. of this Chapter.

\_(2) Hospitals shall assure that written policies and procedures are established, implemented, and maintained for recording such expressions and effective appropriate dispositions in accordance with the expressed intentions of the persons who make the requests.

Authority O.C.G.A. Secs. 44-5-143(d), (h); 44-5-143.1(d)(h). **History.** Original Rule entitled "Hospital Admissions" was filed on June 22, 1987; effective July 12, 1987. **Repealed:** New Rule of same title adopted. F. Nov. 20, 1992; eff. Dec. 10, 1992.

## **290-5-50111-8-05-.07 Routine Request on or Before the Occurrence of Death in Hospitals.**

\_(1) All hospitals shall establish, implement, and maintain written policies and procedures for requesting anatomical gifts on or before the occurrence of death in hospitals. The primary purpose of such policies and procedures shall be to inform persons specified in Rule .07(1)(c)1. and .07(1)(c)2. of their options of making anatomical gifts when previous expressed intentions have not been made either upon admission to the hospital or by document of gift. Such policies and procedures shall include a written agreement with a bank or storage facility and shall, at a minimum, include the following provisions:

\_(a) Screening and Identification of Potential Donors. Before initiating requests for anatomical gifts it must be determined that the body or parts are suitable for donation pursuant to the criteria at Rule .10 of this Chapter.

\_(b) Procedures for Notifying Bank or Storage Facilities of Potential Donors. If it is determined that a body or parts are suitable for donation, the hospital administrator or designated representatives shall contact the concerned bank or storage facility. However, such notification shall only be made in the absence of actual notice of contrary indications by the decedent, or in the absence of actual notice of opposition by a member of the same or prior classes specified in Rule .07(1)(c)1. and .07(1)(c)2. of this Chapter, and when persons in such prior classes are not available.

\_(c) Procedures for Making Requests. Actual request for donations must be made by the notified bank or storage facility and shall only be made if consent would yield a suitable donation. However, hospitals may enter into written cooperative agreements with one or more bank or storage facilities, under which agreements designated hospital staff, including physician or surgeons, may make requests as the authorized agents or representatives of the bank or storage facility. Such requests, whether made by hospital staff or the notified bank or storage facility, shall be made in the following manners:

| 1. For individuals 18 years of age or older, any of the following persons, in order of priority stated, may be requested to give all or any part of the decedent's body for any purposes specified in Rule .04 of this Chapter.

| (i) any person having the power to permit an anatomical gift of all or part of the body of the decedent if such power is granted pursuant to a health care agency created under Chapter ~~36-32~~ of Title 31, the ~~Durable Power of Attorney for Health Care Act~~Georgia Advance Directive for Health Care Act.

| (ii) the spouse;

| (iii) an adult son or daughter;

| (iv) either parent;

| (v) an adult brother or sister;

| (vi) a grandparent;

| (vii) a guardian of the person of the decedent at the time of his death other than a guardian ad litem appointed for such purpose; or

| (viii) any other person authorized or under obligation to dispose of the body.

| 2. For individuals under 18 years of age, any of the following persons, in order of priority stated, may be requested to give all or any part of the decedent's body for any purposes specified in Rule .04 of this Chapter.

| (i) both parents;

| (ii) if both parents are not readily available and no contrary indications of the absent parent are known, one parent;

| (iii) if the parents are divorced or legally separated, the custodial parent;

| (iv) in the absence of the custodial parent, when no contrary indications of the absent parent are known, the noncustodial parent;

| (v) if there are no parents, any grandparent;

| (vi) if there are no parents readily available or any grandparents, the legal guardian; or

| (vii) any other person authorized or obligated to dispose of the body.

| 3. Consent or refusal must be obtained from persons in the highest priority class available.

4. Consent shall be made by a document signed by the person making the gift or by his telegraphic, recorded telephonic, or other recorded message.

(d) Recordkeeping. The hospital administrator or designated representative shall record in a book any notification to a concerned bank or storage facility about a potential donor; whether, if appropriate, a request for a consent to a gift was made; whether or not consent was granted; and the name of the person granting the consent and his or her relationship to the decedent.

(2) Persons authorized in Rule .07(1)(c)1. and .07(1)(c)2. of this Chapter may make the gift after or immediately before death.

(3) If during the process of a routine request, the donee has actual notice of contrary indications by the decedent or actual notice that a gift made by a member of a class is opposed by a member of the same or prior class listed at Rule .07(1)(c)1. and .07(1)(c)2. of this Chapter, then the donee shall not accept the gift.

(4) In the absence of a specification by a decedent or a person authorized in Rule .07(1)(c)1. and .07(1)(c)2. to give all or part of the decedent's body, any bank or storage facility that becomes the donee of any part of the decedent's body shall give preference to potential recipients of that donation of such body part, other than an organ of the decedent, who are residents of Georgia if: the donation is medically acceptable to the potential recipients who are residents of Georgia; potential recipients who are residents of other states are not in greater need of the donation than potential recipients who are residents of Georgia; and the requisite medical procedure required for the potential recipient to receive the donation will be performed in Georgia.

(5) A gift of all or part of a body authorizes any examination necessary to assure medical acceptability of the gift for the purposes intended.

(6) The rights of the donee created by the gift are paramount to the rights of others except nothing in these rules shall restrict the power of a coroner or medical examiner to limit an anatomical gift of all or part of a person's body when a medical examiner's inquiry is required of that person's death pursuant to O.C.G.A. 45-16-24 and nothing in these rules shall restrict legal prescribing powers and duties with respect to autopsies. Authority O.C.G.A. Secs. 44-5-143(b), (c), (d), (e), (f), (h), (j); 44-5-143.1(b), (c), (d), (e), (f), (h), (j); 44-5-145(c); 44-5-148(d), (e). **History.** Original Rule entitled "Routine Requests on or Before the Occurrence of Death in Hospitals" was filed on June 22, 1987; effective July 12, 1987. **Amended:** Filed August 24, 1987; effective September 13, 1987. **Repealed:** New Rule of same title adopted. F. Nov. 20, 1992; eff. Dec. 10, 1992.

## **290-5-50111-8-05-08 Certain Physicians Not to Participate in Removing or Transplanting Parts.**

(1) The following physicians shall not participate in the procedures for removing or transplanting parts:

| (a) The physician who becomes a donee;

| (b) The attending physician of the donor at his death or, if there is no attending physician, the physician who certifies the death.

| (2) However, a document of gift may designate the surgeon or physician who shall carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the gift may employ or authorize any surgeon or physician for the purpose. A physician or surgeon so designated, employed, or authorized to carry out such procedures may authorize any other person to perform such procedures if such person is:

| (a) so trained in those procedures;

| (b) so authorized by the appropriate bank or storage facility to perform those procedures; and

| (c) any of the following:

| 1. a physician's assistant;

| 2. a registered professional nurse;

| 3. a licensed professional nurse;

| 4. a technician; or

5. when the procedure involves only the human eye, an enucleator.

Authority O.C.G.A. Secs. 44-5-145(c), (d), 44-5-148(b). **History.** Original Rule entitled "Certain Physicians Not to Participate in Removing or Transplanting Parts" was filed on June 22, 1987; effective July 12, 1987. **Repealed:** New Rule of same title adopted. F. Nov. 20, 1992; eff. Dec. 10, 1992.

### **290-5-50111-8-05-.09 Delivery of Donations from Receiving Hospitals to Potential Recipients.**

Hospitals shall establish, implement, and maintain appropriate hospital policies and procedures for assisting bank or storage facilities or other permissible donees in the delivery of donations to potential recipients. Such assistance shall include the use of available hospital services, equipment, and supplies. Hospitals shall be reimbursed by the donee for reasonable charges incurred in the provision of such assistance.

Authority O.C.G.A. Secs. 44-5-143(g), 44-5-143.1(g). **History.** Original Rule entitled "Delivery of Donations from Receiving Hospitals to Potential Recipients" was filed on June 22, 1987; effective July 12, 1987. **Repealed:** New Rule of same title adopted. F. Nov. 20, 1992; eff. Dec. 10, 1992.

## **290-5-50111-8-05-.10 Suitability of Anatomical Gifts. Amended.**

(1) A gift authorizes any examination necessary to assure medical suitability of the gift for the intended purposes. The suitability of anatomical gifts shall be determined by attending physicians or surgeons and may be made in conjunction with applicable types of banks or storage facilities. Factors which must be considered in determining suitability shall include age, etiology of death, length of cardiac arrest, and infection or disease. All determinations shall be based upon existing, acceptable medical criteria related to the specific donation and its purpose, as established by the United Network for Organ Sharing, the Southeastern Organ Procurement Foundation, the Organ Procurement and Transplant Network, the American Association of Tissue Banks, and the Eye Bank Association of America, respectively. Hospitals shall be reimbursed by the donee for reasonable charges incurred in doing necessary laboratory work for donor evaluations and suitability determinations when the donee has requested the laboratory work, regardless of whether the donee receives an anatomical gift.

(2) Any permissible donee shall subject or have subjected all human body parts, or the potential donors of such parts, to a HIV test prior to making such parts available for use in the body of another human being. No parts found to be infected or no other parts of a donor found to be infected shall be used in the body of another human.

(3) Unless used for medical research, all HIV infected tissue or organs retrieved from a donor shall be incinerated.

(4) When a human body part or a donor is determined to be HIV infected, the permissible donee that provided or provided for the testing shall:

(a) Provide personal and confidential notification to a living donor from whose body the part was removed if the donee's records identify where the donor is located.

(b) Provide personal and confidential notification to any known physician licensed in Georgia of a deceased donor; such physician shall then have the sole discretion to determine whether to notify the persons who executed the gift or any other persons who were at risk of being infected with HIV by the decedent.

(5) In a medical emergency constituting a serious threat to the life of a potential recipient of blood, if blood that has been subjected to the HIV testing as required by Rule .10(2) is not available, the testing otherwise required by Rule .10(2) shall not be required regarding such blood.

Authority O.C.G.A. Secs. 44-5-143(c)(2), (e), 44-5-143.1(c)(2), (e), 44-5-151. **History.** Original Rule entitled "Suitability of Anatomical Gifts" was filed on June 22, 1987; effective July 12, 1987. **Repealed:** New Rule of same title adopted. F. Nov. 20, 1992; eff. Dec. 10, 1992.

## **290-5-50111-8-05-.11 Training.**

| (1) Persons making requests for anatomical gifts shall relate to donors and families in a sensitive and caring manner and shall have received suitable training in the following areas:

| (a) psychological and emotional considerations when dealing with bereaved families;

| (b) social, cultural, ethical and religious factors affecting attitudes toward donations;

| (c) procedures for declaring death and collecting and preserving organs, tissues and/or other body parts, and how these procedures are to be explained to decedents' families;

| (d) general medical concepts and issues in organ, tissue, and eye donations;

| (e) procedures for notifying and involving banks or storage facilities;

| (f) procedures for recording the outcome of requests.

| (2) Any cooperative agreement between a hospital and bank or storage facility developed in accordance with Rule .07(1) of this Chapter shall include provisions for suitable training of appropriate hospital staff by the bank or storage facility. Such training shall be provided to any staff members designated to request anatomical gifts.

Authority O.C.G.A. Secs. 44-5-143(g), 44-5-143.1(g). **History.** Original Rule entitled "Training" was filed on June 22, 1987; effective July 12, 1987. **Repealed:** New Rule of same title adopted. F. Nov. 20, 1992; eff. Dec. 10, 1992.