

Policy Update

State Initiatives Aim to Protect Transplant Recipients and Increase Organ Donation

By Caroline Jennette and Scott Sanoff

The National Kidney Foundation's "End the Wait" campaign, launched earlier this year, is an ambitious agenda aimed at improving access to kidney transplants. The campaign reflects an increasing recognition nationally that kidney transplantation is the treatment of choice for most individuals with end stage renal disease (ESRD) and a growing awareness of the imbalance between available organs and the number of patients on the waiting list.

The campaign has four overarching goals: 1) improve the outcomes of first transplants, reducing the need for re-transplantation; 2) increase deceased organ donation; 3) increase the number of living donors; and 4) improve the system of transplantation and donation throughout the United States by eliminating regional variations and racial disparities.

In the past decade, many states have begun to address goals similar to those of the "End the Wait" campaign, sometimes with the help of federal legislation. These efforts offer a potential model for those interested in promoting organ donation and transplantation. Table 1 is a state-by-state listing of policy initiatives that seek to increase

organ donation and improve outcomes for transplant recipients.

Incentivizing living donation: The Federal Organ Donation & Recovery Improvement Act

In 2004, Congress amended the Public Health Service Act (Public Law 108-216) to increase public awareness of organ donation. The amendment aims to educate the public about the process for living organ donation, to appropriate funding for states to reimburse living donors for expenses related to donation, and to fund research investigating best practices promoting organ donor awareness and education.

Although a grant program for reimbursing living donors has not yet been funded, 16 states have enacted legislation to help reimburse living donors for travel, lodging, and/or missed wages as a result of organ donation (Table 1). Most states do this in the form of a tax credit or tax deduction of up to \$10,000. Twenty-seven states provide a leave of absence (paid or unpaid, depending on the state), usually up to 30 days, for state employees who wish to be organ donors. Two states offer tax credits to employers if they provide a leave of absence for their employees to be an organ donor.

These tax credits and leave of absence

provisions are not seen as violating the National Organ Transplant Act, which bars the donation of an organ for "valuable consideration," because they do not provide a direct case benefit. However, they are still seen as controversial by groups who view any compensation for organ donation as a slippery slope to paying donors outright for their organs. A national tax credit bill (Living Organ Donor Tax Credit Act of 2007) was introduced in Congress but was never passed.

As of mid-March 2009, six states had introduced bills offering a tax credit (one state offering both a tax credit and a paid leave of absence), and one state had introduced a bill granting a leave of absence for organ donors.

Reframing organ donation: the Uniform Anatomical Gift Act

The Uniform Anatomical Gift Act (UAGA) was first created in 1986 by the State Conference of Legislatures as a means to create uniform policy governing organ donation and the process by which a person may gift their body to medical science. States could voluntarily adopt the policy. In 2006, new provisions were added, including one designating organ donor status on drivers' licenses as legal consent for organ donation.

Before this provision, a driver's license designation did not pass for legal consent and familial consent had to be obtained. Thirty-two states have enacted the revised UAGA and it is currently in session in eight states.

Protecting transplanted kidneys: transplant immunosuppressive drug coverage

The journey to full coverage of immunosuppressive drugs for kidney recipients continues, punctuated with small victories. In 1993, Medicare coverage for immunosuppressive medication was extended from 12 to 36 months for Medicare-covered ESRD patients. In 2001, coverage was extended for the life of the transplant for patients otherwise eligible for Medicare (those 65 or older, or disabled by Medicare standards for reasons other than ESRD).

However, significant gaps in coverage remain. According to the U.S. Renal Data System (USRDS), approximately 80 percent of kidney transplant recipients are currently under the age of 65, leaving them at risk of losing all or part of their immunosuppressive drug coverage if their 36-month limit is up this year, unless they are otherwise eligible for Medicare. Legislation has been introduced to extend immunosuppressive coverage for the life of the transplant to this population of younger, non-disabled transplant recipients at every congressional session since 2001 but has yet to pass.

While the battle for lifelong transplant medication coverage continues at the national level, many states are trying to protect patients from medication cost-saving measures. Some states are trying to bar non-physicians from switching brands or changing dosages without signed prior authorization from the physician and/or the patient. Two states have passed this legislation, and six states have introduced it for the 2009–2010 legislative session.

Washington state has introduced a bill that bars insurance plans from creating a separate lifetime limit on coverage for transplant recipients, and Illinois is working on similar insurance protections. Oregon has a bill in session that would require its state department of human services to pay for brand name rather than generic immunosuppressive drugs prescribed in connection with organ transplants. Lawmakers in California are working on extending state Medicaid coverage for anti-rejection medications for up to three years posttransplant unless recipients become eligible for other insurance.

Organ donation on the public radar: statewide initiatives to educate and raise awareness

National awareness campaigns have helped raise awareness about the need for organ donation, and as a result, many states have funded public outreach initiatives, although none have focused specifically on kidney

Table 1
Transplant and organ donation policy initiatives by state, 2002–2009

	Tax credit/ deduction for living donors	Leave of absence for living donors	Revised UAGA	Immuno- suppressive drug protections	\$ for organ donation education/ awareness		Tax credit/ deduction for living donors	Leave of absence for living donors	Revised UAGA	Immuno- suppressive drug protections	\$ for organ donation education/ awareness
Alabama			●			Nevada			●		
Alaska			●			New Jersey	○		●	○	○
Arizona		●	●			New Mexico	●	●	●		
Arkansas	●	●	●		●	New York	●	●		●	●
California		●	●	○	○	North Carolina			●		○
Colorado			●		●	North Dakota	●		●		
Connecticut	●	●	○			Ohio	●	●	●		
Delaware		●				Oklahoma	●	●			
District of Columbia		●	●			Oregon	○		●	○	○
Florida			○		●	Pennsylvania	●	●			●
Georgia	●	●	●	○		Rhode Island			●		○
Hawaii	○	●			○	South Carolina		●	○		
Idaho	●	●	●			South Dakota			●		
Illinois		●	●	○	●	Tennessee			●	○	
Indiana		●	●			Texas		●	○		●
Iowa	●	●	●			Utah	●	●	●	●	
Kansas			●			Vermont			○		
Kentucky	○	○	○			Virginia	●		●		○
Louisiana	●				●	Washington			●	○	○
Maine		●	●			West Virginia	○	●	●	○	
Massachusetts	●	●		○		Wisconsin	●	●			
Michigan			●	○	○	Wyoming			○		
Minnesota	●	●	●			TOTAL	22	28	40	12	18
Mississippi		●	●								
Missouri		●	●		●						
Montana			●								

● = Policy enacted
○ = Policy currently in session as of 3/20/2009
UAGA = Uniform Anatomical Gift Act

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Industry Spotlight

Vascular Access Coding Stays Same

The Centers for Medicare and Medicaid Services decided against coding edits that would have changed the way vascular access procedures are billed.

Coding guardians at the American Society of Diagnostic and Interventional Nephrology (ASDIN) and other industry groups formed a coalition that succeeded in keeping certain

codes and definitions unchanged.

A Medicare coding program, the National Correct Coding Initiative, proposed changes that would have bundled the HCPCS codes G0392 and G0393. (During a percutaneous transluminal balloon angioplasty at a hemodialysis access site, if access to the “vessel” for the procedure is through an artery, code

G0392 should be reported, and if access is through a vein, code G0393 should be reported.) The industry coalition argued that the codes should remain separate. As separate codes, they can still be billed together for the procedure in certain circumstances.

The coalition also successfully fought against creating a new definition of an

arterial versus venous angioplasty, and against ending the use of code 35476 for draining a forearm fistula. Code 35476 generally is for a separate procedure outside of the fistula or graft location. Angioplasty may be coded a second time, with clear documentation, when a separate procedure is needed at a different site. ●

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donation. Nine states have passed legislation in the past seven years to fund organ donation education and public awareness programs. Nine other states have proposals pending in the 2009–2010 session.

New Jersey is working on legislation that would mandate education in public high schools and colleges to dispel myths about being an organ donor and the donation process. New Jersey is also working on legislation to create an education program for state contractors and their employers. New York and North Carolina hope to pass legislation similar to that of Florida and Louisiana, to create “Donate Life” license plates, with the funds generated going to organ donation awareness education. Colorado passed legislation to add a check-off box on state tax forms so taxpayers could contribute funds to the state’s Organ and Tissue Donation Awareness Fund. On a national level, the Department of Health and Human Services offers grants to states to implement educational campaigns.

Examining federal and state legislative activities, it is clear that transplantation and organ donation are on the radar. During these hard economic times, it is hoped that state-based efforts, supplemented and enhanced by campaigns such as NKF’s “End the Wait,” and by members of the organ donation and nephrology communities, can expand access to kidney transplantation and promote a new level of awareness about the importance of organ donation.

For more information on these and other kidney-related state policy initiatives currently in session, please visit <http://www.unckidneycenter.org/healthpolicy/kidneypolicystate.html>. ●

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