

# Presumed Consent & Mandated Choice for Organs from Deceased Donors

## Code of Medical Ethics Opinion 6.1.4

Organ transplantation offers hope for patients suffering end-stage organ failure. However, the supply of organs for transplantation is inadequate to meet the clinical need. Proposals to increase donation have included studying possible financial incentives for donation and changing the approach to consent for cadaveric donation through “presumed consent” and “mandated choice.”

Both presumed consent and mandated choice models contrast with the prevailing traditional model of voluntary consent to donation, in which prospective donors indicate their preferences, but the models raise distinct ethical concerns. Under presumed consent, deceased individuals are presumed to be organ donors unless they have indicated their refusal to donate. Donations under presumed consent would be ethically appropriate only if it could be determined that individuals were aware of the presumption that they were willing to donate organs and if effective and easily accessible mechanisms for documenting and honoring refusals to donate had been established. Physicians could proceed with organ procurement based on presumed consent only after verifying that there was no documented prior refusal and that the family was not aware of any objection to donation by the deceased.

Under mandated choice, individuals are required to express their preferences regarding donation at the time they execute a state-regulated task. Donations under mandated choice would be ethically appropriate only if an individual’s choice was made on the basis of a meaningful exchange of information about organ donation in keeping with the principles of informed consent. Physicians could proceed with organ procurement based on mandated choice only after verifying that the individual’s consent to donate was documented.

These models merit further study to determine whether either or both can be implemented in a way that meets fundamental ethical criteria for informed consent and provides clear evidence that their benefits outweigh ethical concerns.

Physicians who propose to develop or participate in pilot studies of presumed consent or mandated choice should ensure that the study adheres to the following guidelines:

1. ( )Is scientifically well designed and defines clear, measurable outcomes in a written

protocol.

2. ( )Has been developed in consultation with the population among whom it is to be carried out.
3. ( )Has been reviewed and approved by an appropriate oversight body and is carried out in keeping with guidelines for ethical research.

Unless there are data that suggest a positive effect on donation, neither presumed consent nor mandated choice for cadaveric organ donation should be widely implemented.

*AMA Principles of Medical Ethics: I, III, V*

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