



Changing Liver Transplant Parameters: Threatening Patients and Health Care Providers in Georgia and Across the Southeast

Joseph S. Rubin, H. Carol Saul and Alan C. Horowitz

On March 16, 2000, the U.S. Department of Health and Human Services (HHS) promulgated a Final Rule, in part instructing the federally contracted Organ Procurement and Transplantation Network/Unit Network for Organ Sharing (OPTN/UNOS) to develop policies regarding the best use of donated organs.¹ As always, the devil is in the details and proposed changes may significantly disadvantage citizens in Georgia and other Southeastern states whose lives depend on a liver transplant. AGG attorneys are working on a legislative solution to halt or modify these proposed changes.

In 2014, about 7,200 liver transplants were performed in the U.S., though nearly 15,000 people were registered on the waiting list for a liver transplant. Unfortunately, about 10% of those on the waiting list die each year because they are unable to obtain a liver transplant. There are currently 335 Georgians on the waiting list for a liver transplant, according to UNOS.

Liver transplants are complex operations that require specialized and costly hospital facilities. Because a liver breaks down quickly, time is of the essence in performing a liver transplant. A sophisticated priority and delivery system has developed that was designed to ensure that compatible organs are delivered to the neediest patients in a timely fashion.

The current delivery system divides the U.S. into 11 “regions” and preference for a transplant is generally given to the highest priority person in that region. Georgia is currently located in Region 3, which also contains Alabama, Arkansas, Florida, Louisiana, Mississippi, and Puerto Rico.

While the current system is both complicated and imperfect, it works well, saving hundreds of lives and wasting very few precious organs. In Georgia, “organ donation is working quite well,” said Dr. Stuart Knechtle, director of liver transplantation at Emory University Hospital, and chief of transplant services at Children’s Healthcare of Atlanta.

Sadly, even under the current structure, not all of the 335 Georgians currently in need a liver transplant will live long enough to receive a lifesaving liver. The proposed changes by OPTN/UNOS, discussed below, are likely to make that tragic situation even worse for Georgians. OPTN,² the quasi-government agency that sets the donation parameters, has proposed changing the current 11 regions into 8 new districts, with different geographical boundaries. This process would expand Georgia into a new area extending as far north as Connecticut.

The much larger proposed district is likely to have an adverse effect on Georgia patients and on most other states throughout the country. For example, dramatically increasing the distance that an organ has to travel will reduce the chances of a successful operation. Further, increasing the size of the geographical area means that those on the waiting list in Georgia will be competing with a much larger pool of patients, reducing the probability of receiving a liver in a timely fashion.

If the proposal is implemented, it could reduce liver availability in Georgia by as much as 25%.

¹ Final Rule, Part 121 [42 CFR], Organ Procurement and Transplantation Network, available at: <http://www.ecfr.gov/cgi-bin/text-idx?SID=bb60e0a7222f4086a88c31211cac77d1&mc=true&node=pt42.1.121&rgn=div5>, Last accessed on October 22, 2016.

² The OPTN Proposal, “*Redesigning Liver Distribution*” is available at: <https://optn.transplant.hrsa.gov/governance/public-comment/redesigning-liver-distribution/>, Last accessed on October 22, 2016.

While some states admittedly would benefit from this reallocation, such as New York and California, most of the rest of the country would see a decrease in the availability of donated livers. This controversial proposal has generated widespread and vocal opposition from a majority of the transplant community across the country. Additionally, Congressman Lynn Westmoreland (R-GA) was one of a group of 11 bipartisan representatives from Georgia that sent a letter to Mary K. Wakefield, the Administrator of HRSA, expressing concern about how the proposed changes could adversely affect Georgians.³ (In response, Administrator Wakefield wrote that “OPTN and SRTR are monitoring the potential impact of any future liver allocation policy changes on minority populations.”)⁴

More than 1,000 comments were submitted to the OPTN/UNOS regarding the proposed policy changing liver allocation and distribution, which only becomes effective if the OPTN/UNOS Board of Directors approves the policy. Arnall Golden Gregory is working with a number of transplant facilities and other stakeholders across the country to seek to have Congress step-in and force OPTN to reconsider this proposal.

³ “HRSA” is the Health Resources & Services Administration, one of the operating divisions within HHS that has jurisdiction, along with CMS, over organ procurement and transplantation.

⁴ Letter from HRSA Administrator Mary K. Wakefield to Congressman Moreland, dated May 14, 2014, available at: <http://keeptransplantsfair.org/wp-content/uploads/2015/06/Letter-HRSA-Respons-to-GA-Congressmen.pdf>, Last accessed on October 22, 2016.

Authors and Contributors

Joseph S. Rubin
Of Counsel, DC Office
202.677.4904
joseph.rubin@agg.com

H. Carol Saul
Partner, Atlanta Office
404.873.8694
carol.saul@agg.com

Alan C. Horowitz
Partner, Atlanta Office
404.873.8138
alan.horowitz@agg.com

not *if*, but *how*.[®]

About Arnall Golden Gregory LLP

Arnall Golden Gregory, a law firm with more than 150 attorneys in Atlanta and Washington, DC, employs a “business sensibility” approach, developing a deep understanding of each client’s industry and situation in order to find a customized, cost-sensitive solution, and then continuing to help them stay one step ahead. Selected for The National Law Journal’s prestigious 2013 Midsize Hot List, the firm offers corporate, litigation and regulatory services for numerous industries, including healthcare, life sciences, global logistics and transportation, real estate, food distribution, financial services, franchising, consumer products and services, information services, energy and manufacturing. AGG subscribes to the belief “not if, but how.” Visit www.agg.com.

Atlanta Office
171 17th Street, NW
Suite 2100
Atlanta, GA 30363

Washington, DC Office
1775 Pennsylvania Avenue, NW
Suite 1000
Washington, DC 20006

To subscribe to future alerts, insights and newsletters: <http://www.agg.com/subscribe/>

©2016. Arnall Golden Gregory LLP. This legal insight provides a general summary of recent legal developments. It is not intended to be, and should not be relied upon as, legal advice. Under professional rules, this communication may be considered advertising material.