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NY lawmaker wants presumed organ donation consent

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A New York assemblyman whose daughter is alive because of two kidney transplants wants his state to become the first in the nation to pass laws that would presume people want to donate their organs unless they specifically say otherwise.

Assemblyman Richard Brodsky believes the "presumed consent" measures would help combat a rising demand for healthy organs by patients forced to wait a year or more for transplants. Twenty-four European countries already have such laws in place, he said.

If he succeeds, distraught families would no longer be able to override their loved ones' decisions to donate upon their death. And eventually, hospitals would be able to assume the deceased consented to have his or her organs harvested, unless the person refused in writing.

Brodsky's interest in organ donation is personal; his 18-year-old daughter, Julianne "Willie" Brodsky, received a kidney four years ago from a donor who was struck by lightning and an earlier transplant from her mother.

"People's survival should not rest on acts of God alone," said the elder Brodsky, a Westchester County Democrat.

Advocates say the availability of healthy donor organs is low just about everywhere nationwide, where 106,000 people are on a waiting list that averages three to four years for each type of organ.

But serious emotional, medical and ethical concerns worry families, who currently can stop organ harvests even if their loved ones agree to donate. So New York will move slowly, Brodsky said.

The state Department of Motor Vehicles says that 95 percent of the 2 million donors on New York's donor registry come from driver's licenses. The shortage occurs because the need is constant and many donors sign up when they are young, meaning any organ harvest can be years away.

Presumed consent, opponents say, could force someone to become a donor against their will. It also might lead patients viewed as prospective donors to worry about how hard a medical team will work to save them if there is a greater benefit to harvesting the organs.

Arthur Caplan, director of the Center for Bioethics at the University of Pennsylvania, knows those arguments.

"There is a keen interest in trying to do something about the shortage of organs," he said, noting a consent effort surfaced last year in Delaware, but stalled. "Just redoubling efforts to get people using donor cards isn't working."

He said advances in medicine, a proliferation of transplant centers and longer life spans are driving demand, while supply is fairly static. Advocates say more than a dozen people on the national waiting list

die each day.

"I think about it a lot," said Kathe LeBeau, 51, of Latham, N.Y. She's had kidney disease since she was 45, is on dialysis and has been waiting three years on the list for a kidney donation. "I can't hardly wait for the call."

Presumed consent, especially compared to another possible option of creating a legal organ market, can work in the United States as it has successfully in Europe, Caplan said.

"I have been arguing since 1983 for presumed consent ... Spain, Austria, and Belgium shows success and it works and people don't feel they aren't given a fair chance to say 'no,'" he said.

Still, he said a system that defaults to harvesting everyone's organs will be a hard sell, and prompt misconceptions.

A 2008 bill in Delaware would have created an opt-out organ donation program but never got out of committee. Opponents called it an intrusion into people's privacy that treated organs as commodities.

New York's presumed consent would come in stages. The primary bill, which has strong support, would end what Brodsky said is a common practice by upset relatives who override the checkoffs of driver's licenses and other documents executed by deceased donors.

This would enable hospitals to more quickly prepare a body for organ removal.

"We've lost literally thousands of organs in the confusion," Brodsky said.

The next step is far more controversial. In a separate bill, drivers would check a box saying they don't want to donate organs. If the box is not checked, it is presumed the driver wants to donate. Brodsky says he would revisit the opt-out bill if the primary bill is made law.

Some national organ donor organizations refuse to take positions on the opt-out proposal. So far, neither bill has a sponsor in the state Senate, also controlled by Democrats. The session ends June 21, but remains dominated by the late state budget that was due April 1.

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