SUBJECT: Allocating kidneys available for transplant in Texas

COMMITTEE: Public Health — favorable, without amendment

VOTE: 5 ayes — Laubenberg, Truitt, Dawson, Taylor, Zedler

0 nays

4 absent — Capelo, Coleman, McReynolds, Naishtat

SENATE VOTE: On final passage, May 6 — 31-0, on Local and Uncontested Calendar

WITNESSES: No public hearing

BACKGROUND: The 71st Legislature in 1989 enacted the Texas Anatomical Gift Act (Health and Safety Code, ch. 692), which adopted provisions of the federal Uniform Anatomical Gift Act of 1968 and specific state guidelines for the process of organ and tissue donation in Texas.

The Organ Procurement and Transplantation Network (OPTN) is the unified transplant network established under the federal National Organ Transplant Act of 1984. The act calls for the network to be operated by a private, nonprofit organization under federal contract. The United Network for Organ Sharing (UNOS) currently holds the federal OPTN contract with the U.S. Department of Health and Human Services (DHHS).

Kidneys are allocated in Texas according to UNOS guidelines, which generally support transplants for the sickest patients first. A point system assigns weights to patients based upon such factors as illness, age, ethnicity, blood type, and human leukocyte antigen (HLA) match. Kidneys may be transplanted from live or deceased (cadaveric) donors. A geographic system is set up for distributing organs within this framework. UNOS must approve any variances from the national guidelines.

Nationwide, 59 organ procurement organizations (OPOs) are responsible for facilitating organ procurement and for allocating organs in accordance with national policy (42 U.S.C., sec. 273). Most states have only one OPO, but

Texas has three, each of which keeps its own waiting list and serves a certain region of the state. Patients can be listed at more than one transplant center, but the centers must be located in different OPO areas.

In 1999, the 76th Legislature enacted SB 862 by Janek, requiring a Texas OPO to give first priority for organ distribution to waiting-list candidates at transplant centers in Texas. In accordance with national UNOS policy, organs are given first to patients who are a perfect match, no matter where they live in the United States. A perfect match is a six-point HLA match. If a kidney does not generate a perfect match, it is made available first to local transplant centers within the OPO territory where it became available. If there is no suitable local match, the organ can be made available throughout UNOS Region 4, which includes Texas and Oklahoma. After that, the kidney becomes available nationally.

SB 862 also required the appointment of a statewide task force to develop and implement an optimum organ allocation policy. The task force defined the optimal allocation system as one by which every person awaiting a transplant in Texas would have the same opportunity to receive an organ from an optimal organ pool. An optimal organ pool would give all Texas patients access to every organ in the state. Because of cost constraints and logistical and technological issues related to keeping organs viable for transplant, the task force agreed that a statewide list was not feasible.

As of March 31, 2003, 3,773 candidates for kidney transplantation were on the waiting lists of Texas' three OPOs. Of those candidates, two-thirds have low panel or percent reactive antibodies (PRA), one of the indicators of the likelihood that a compatible kidney will be found for the patient. Of the low-PRA patients, those that should be transplantable, 357 (14 percent) have been waiting at least three years.

DIGEST:

SB 1226 would require each OPO in Texas to allocate 20 percent of the cadaveric kidneys of each blood type it recovered to a special statewide kidney sharing pool. Kidneys in the sharing pool would be distributed first to patients who had been waiting the longest for transplantation.

Medically eligible patients would include those with a low PRA (less than 10 percent) who comprised the top 20 percent of all waiting patients in terms of

waiting time. As one patient of these patients received a transplant, the next longest waiting patient would be moved up the list. Only accumulated waiting time would be used to establish priority access to the pool.

Except for perfectly matched kidneys, HLA points would not be assigned for kidneys in the pool. After a patient qualified for entry into the pool, the distribution would be based solely on the length of time each patient had waited. The OPTN would manage use of the pools. A panel of appropriate physician specialists made up of Texas' OPTN members would monitor the patient list and the appropriate use of the pools.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003. Qualified OPOs would have to submit a kidney sharing agreement to the OPTN within 180 days after the effective date.

SUPPORTERS SAY:

SB 1226 would make the kidney distribution system in Texas more equitable for all patients. Because waiting times differ by geographic region and by OPO in Texas, geography should not be the determining factor as to whether a patient receives a transplant. Creating a special pool that would give priority to patients who had waited the longest, no matter where they live in the state, would be one way to overcome geographic inequities and address imbalances in the current system. Good patient care knows no boundaries, and the well-being of patients is more important than any territorial differences.

The task force created by SB 862 made a unanimous recommendation that a patient pool be created to allow patients waiting the longest to be transplanted first. However, there has been no guiding force to assure creation of the pools, and, as a result, the waiting times for kidney transplant candidates have increased gradually. SB 1226 would implement the task force's recommendation.

While OPTN rules were clarified to grant more flexibility for states in the area of kidney transplantation, only a few New England states have created special pools for long-waiting patients. States have responded to federal guidelines and have ranked patients according to medical urgency, but with advances in renal dialysis, a kidney patient could survive for years before a transplant became urgent. Long-term renal dialysis is expensive, and many

dialysis patients depend on government assistance. It has been proven that a successful kidney transplant pays for itself in two years. Thus, the state has economic as well as humanitarian incentives to help patients who are tied to dialysis machines to obtain earlier access to transplants.

SB 1226 would level the playing field for patients disadvantaged by the current system. Geographic location and ethnicity are two of the main reasons for increased waiting time. Because more organs become available in urban areas, patients who live in urban areas have an advantage over others. Of the 1,600 Hispanic patients in Texas, more than 1,000 are on the waiting list for South Texas, which has a significantly larger list than the other two OPOs. Clear evidence shows that current UNOS allocation methods put minorities at a disadvantage, and ongoing responses have yet to resolve this issue. While registering on multiple waiting lists can shorten waiting times, it also can be expensive and inconvenient, so that option is not available to all patients. SB 1226 would create an equitable way for rural, minority, or economically disadvantaged patients to gain access to life-saving transplants.

Patients want a fair and equitable system. Those waiting for kidneys express an overwhelming desire for fairness. With only rare exceptions, patients who participated on the UNOS Patient Affairs Committee indicated that they were willing to wait their turn if the system was fair. However, they were not willing to accept that their turn would come in five to six years if someone else's turn came in less than a year or two. They clearly did not feel that they should be disadvantaged by where they live or by their ethnicity.

The kidney sharing pool proposed in SB 1226 would not take effect automatically upon the bill's enactment but would have to be approved first by 75 percent of the transplant centers in the state and then by UNOS and DHHS. Any variance from federal regulations rightly would go through a long and arduous approval process. Because SB 1226 is only the first step in that process, the sooner the state acts, the sooner the task force's recommendations could take effect.

OPPONENTS SAY:

SB 1226 would ignore national standards of practice in regard to tissue typing when allocating kidneys, putting Texas on a collision course with federal regulations. Whether tissue typing should be used in the allocation system is a very complex issue that is being addressed on the federal level. Only three

months ago, changes were made to lessen the impact of certain tissue typing that makes it more difficult for certain minority groups to receive kidney transplants. In the short term, poorly matched kidneys perform well, but success should be evaluated on long-term results, especially in life-or-death situations such as these. Using state law to mandate a change in the standard of care and the standard of practice is highly questionable and potentially dangerous.

OTHER OPPONENTS SAY:

The current system involving three Texas OPO regions is not working equitably, and SB 1226 would not address the state's real distribution problems. The three OPO regions were drawn haphazardly. For example, Dallas has been placed in the same region as El Paso, and Fort Worth in the same region as Houston. If a recipient in urgent need of a transplant is close to a location where an organ has been donated but the location is in a separate region, that patient remains on a waiting list. The needed organ will be transported many miles away to a recipient who may be in less urgent need. A wholesale redrawing of OPO boundaries should be undertaken rather than tinkering at the edges of the system. SB 1226 would affect fewer than 10 percent of Texas' kidney transplant candidates — only 357 Texas patients — rather than addressing statewide equity issues that could improve the system for several thousand Texans on transplant waiting lists.

NOTES:

A related bill, SB 1135 by Carona, which would create contiguous OPO territories in Texas with a goal of equalizing waiting times for organ transplants, was left pending in the Senate Health and Human Services Committee.