

Legal Brief

Blood Transfusions

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Summary

Hospitals and ambulatory surgical centers are required to provide services related to blood transfusion in order to safely meet the medical needs of their patients. A patient may request a transfusion from a specific donor or donors, but if it isn't possible to obtain blood from the designated person or persons within the time available, the health care provider that provides or facilitates a donation from another donor is not liable to the patient for transfusing the blood of another. Certain warranties that apply to other products do not apply to transfused blood and blood products.

Discussion

Each general and specialty hospital providing transfusion services must provide facilities and equipment for the procurement, storage and administration of whole blood and blood products. The transfusion service must be under the supervision of a qualified director. The medical staff or an equivalent committee, which staff or committee must include a pathologist, must review all transfusions and transfusion reactions and make recommendations concerning policies and procedures governing such practices. ARSD 44:04:10:04.

Ambulatory surgery centers must provide blood, blood products and equipment required for this administration as needed to meet the needs of patients at the surgery center. The surgery center must adopt written policies and procedures regarding the administration of blood and blood products, along with policies and procedures for the investigation of possible transfusion reactions. ARSD 44:04:16:14.

Any person requiring a transfusion of whole blood or blood components may specify a donor or donors to provide the blood. However, the blood from the specified donors must undergo the same screening procedures for acceptability for donation and transfusion as are medically necessary or required for blood donations of nonspecified donors. If no specified donor is available to donate blood, or if it is not possible for the blood from a specified donor to be processed within the time determined by a physician to be necessary to sustain life, the physician, hospital, blood bank, or blood collection center and their officers, directors, agents, or employees are not liable solely because whole blood or blood components from donors other than those specified by the recipient is as a result transfused into the recipient. SDCL 34-24B-1.

The Uniform Commercial Code creates certain implied warranties relating to the sale of goods. Pursuant to SDCL 57A-9-315.1, the sale and transfusion of blood and blood components are to be considered medical services, and therefore exempt from the implied warranties of merchantability and fitness for a particular purpose insofar as those warranties

relate to the transmission of certain infectious diseases, such as viral hepatitis, cytomegalovirus, human immunodeficiency virus, malaria and syphilis, and potential immunologic reactions, which diseases and reactions cannot be detected by standard testing.

Conclusion

Blood collection, storage and transfusion must be handled appropriately and in conformity with established policies and procedures as required by law. A patient's designation of a specific blood donor must be honored, but only if the designated donor is available and the blood can be tested and transfused within the time safely available.

For a discussion of blood transfusions to minors without parental consent and blood donation by minors, see *Treatment of Minors*

Sources: SDCL 34-34B-1, 57A-2-315.1
ARSD 44:04:10:04, 44:04:16:14.



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