This revised analysis replaces the analysis dated 2-9-00.

House
Legislative
Analysis
Section

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ORGAN DONATIONS

House Bill 4383 (Substitute H-1)
House Bill 4384 as introduced
Sponsor: Rep. Lynne Martinez

House Bill 5015 (Substitute H-1)
House Bill 5023 (Substitute H-1)
Sponsor: Rep. Keith Stallworth

Committee: Health Policy
First Analysis (4-20-00)

THE APPARENT PROBLEM:

Michigan's voluntary anatomical gift program does not meet the growing demand for organs and tissues. Though great strides have been made in recent years, especially with the enactment of Public Acts 118, 120, and 458 of 1998, which streamlined the donation process, shortages persist. Before the 1998 legislation took effect, Michigan ranked 46th in the nation in terms of organ donors. Since that time, the donor registry has grown from 20,000 to approximately 180,000 and Michigan now ranks 21st in the nation for organ donors. Unfortunately, over 2,500 patients in the state are currently waiting for transplants. It has been estimated that about 300 of them will die this year because not enough organs are available. It is believed that further amendments to the laws governing organ donations may serve to bring additional attention to the need for organ and tissue donors and also could further streamline regulations that may result in a greater number of donated organs and tissue.

THE CONTENT OF THE BILLS:

The bills would amend laws pertaining to making anatomical gifts. Specifically, the bills would do the following:

House Bill 4383 would amend provisions of the Public Health Code (MCL 333.10102 and 333.10104) regarding how a person may signify his or her intent to make an anatomical gift. Currently, a person may make an anatomical gift by will or by another document, provided that the document is signed by or for the donor in the presence of two or more witnesses who must also sign the document or by a uniform donor card or substantially similar document. Under the bill, the required witness signatures would be reduced from two to at least one. The bill would further specify that a personal identification card, or an operator's or chauffeur's license, that contained a statement that the person was an organ and tissue donor, along with the person's signature and the signature of at least one witness, would constitute a document of gift for organ donation. Unless the person specified on the back of his or her license or identification card that he or she intended to make a gift of his or her entire body, the gift would be limited to parts of the body and not the whole. If a would-be donor were unable to sign a gift document, he or she could direct it to be signed on his or her behalf, in his or her presence and the presence of at least one witness who would also have to sign the document. A person's decision to make an anatomical gift of part or all of his or her body either by will or by a document of gift would not be revocable after the person's death.

The bill would also amend these provisions to more clearly prioritize the list of relatives and others who might be decision-makers on behalf of the decedent donor (unless the donor has expressed an unwillingness to make a gift): first a patient advocate designated before April 1, 2000, under the revised Probate Code or designated on or after April 1, 2000 under the Estates and Protected Individuals Code; then the spouse; followed by an adult son or daughter; then either parent; and continuing with an adult brother or sister; guardian of the decedent; or, one authorized to dispose of the body. A decision to donate the organs of the decedent made under this provision could not be revoked by a person who had a lower priority. The bill is tie-barred to House Bill 4384.

House Bill 4384 would amend the Estates and Protected Individuals Code (MCL 700.1106 et al.), which will take effect on April 1, 2000, to specify that a patient advocate or other person could be authorized to donate the organs of an individual making the authorization. (The Estates and Protected Individuals Code, created by Public Act 386 of 1998, will repeal and replace the Revised Probate Code.) As written, the act allows any person over 18 years of age to authorize another individual over the age of 18, in writing, to exercise powers concerning his or her care, custody, and medical treatment decisions. The bill would specify that a person could also include authorization for the individual to make an anatomical gift of all or part of his or her body. A statement would have to be included specifying that the authority to donate another's body would only be exercisable when the patient was dead or when death was imminent and inevitable. Patient advocates could also be designated to authorize the donation of a patient's body, and would be held to the same restriction as to when the authority to make such a decision could be exercised. Currently, a patient advocate designation is revoked upon a patient's death. However, the bill would specify that a patient's death would not nullify the part of the designation authorizing a patient advocate to make an anatomical gift of the patient's body. The bill is tie-barred to House Bill 4383.

House Bill 5015 would amend several provisions of the Public Health Code (MCL 333.10102 et al.) pertaining to organ donations. Under current law, organ donations can be made to a bank or storage facility for medical or dental education, research advancement of medical or dental science, therapy, or transplantation. The bill would specify that this would include, but not be limited to, the federally designated organ procurement organization in whose service area the gift was made.

In addition, the code has established a protocol for hospital personnel to follow in regards to asking the family members of a dying or recently deceased person for a donation of all or any physical part of the decedent's body. The bill would add that the person making the request for an organ donation could provide the person to whom the request was made with a document of gift that conforms with the code's requirements for a uniform donor card.

Further, under current law, a person may donate his or her body or body parts to any hospital, surgeon, or physician for medical or dental education, research advancement of medical or dental science, therapy, or transplantation. The bill would amend the provision to specify that if a hospital became a donee of an organ or other body part that was designated for transplantation but did not have a patient who needed that type of transplant, the hospital would be required to offer the donated organs to the federally designated organ procurement organization in whose service area the hospital was located.

House Bill 5023. The Public Health Code has established protocols for hospital personnel to follow in regards to asking a patient or the family members of a dying or recently deceased person for a donation of all or any physical part of the decedent's body, which includes requiring the chief executive officer (CEO) of the hospital to designate one or more persons to make such requests of a patient or his or her family. The bill would amend the code (MCL 333.10102a) to allow a hospital to enter a fee for service contract with one or more individuals which could include, but would not be limited to, one or more licensed attorneys or certified public accountants (CPAs) who would explain the benefits of organ donation to potential donors, and assist the person designated by the hospital's CEO in obtaining the necessary written consent. A hospital that did enter a fee for service contract under the bill would have to comply with all conditions pertaining to Medicare participation, including conditions related to training persons who would be designated as requesters. "Medicare" is defined in the code.

BACKGROUND INFORMATION:

The National Organ Transplant Act, enacted in 1984, called for the establishment of a national organ procurement and transplantation network (OPTN). Membership in the OPTN includes hospitals with transplant programs and organ procurement organizations (OPOs). The OPTN maintains a national computerized list of patients waiting for organ transplantation and a 24-hour-a-day computerized organ placement center which matches donors and recipients. Under the oversight of the U.S. Department of Health and Human Services (HHS), the OPTN has established voluntary policies for member organizations in regard to procurement of organs, organ allocation, and donor-recipient matches. Since 1986, HHS has contracted with the United Network for Organ Sharing (UNOS) to administer the OPTN. A nonprofit, independent corporation, UNOS' function includes the compilation of statistics used to ascertain and to coordinate both the availability and the location of donors and those who await transplant of organs and tissues.

Because of the voluntary nature of the OPTN policies, individual states and the 62 organ procurement organizations, which act as organ recovery and distribution agencies, have had some flexibility in deciding how to allocate organs that were procured, or donated, in their regions. In addition, there are different allocation policies for each type of organ. When organs become available, it is typical to look for recipients first in the local service area. The service areas are federally designated and each area may be a multi-state area or be an area that covers part or all of an individual state. In the case of liver donations, Michigan is part of a reciprocal agreement with Indiana and Ohio. In Michigan, with eight organ transplantation centers, an organ from a Michigan donor is usually given to a Michigan transplant patient.

In 1994, the U.S. Department of Health & Human Services published proposed rules to codify the operation of the Organ Procurement Transplantation Network, with the final rule being published on April 2, 1998. In October of 1998, Congress placed a moratorium on the rules for one year and ordered an independent study to be done by the Institute of Medicine. Though scheduled to go into effect on October 21, 1999, the rules were once again put on hold while several provisions of the rules, particularly the issue of organ allocation, were discussed further. Revisions have recently been adopted to the rules to address many of the concerns, including provisions to: emphasize and strengthen the role of the transplant community in policy development; establish an Independent Advisory Committee to ensure policies are grounded on the best available medical science; deem a broader sharing of organs to be acceptable and not require a "single national list"; and prohibit policies that would waste organs or allow transplants that are futile. The OPTN final rule is scheduled to take effect March 16, 2000.

Before the latest revision of the OPTN final rule was made public, some believed that the federal rule opened the possibility for the creation of a national list that would require organs to go the sickest people on the list regardless of the geographical distance involved. To address that concern, legislation was introduced in the form of House Bill 4851, which has been passed by the House and is waiting Senate action. For more information, see the House Legislative Analysis Section's analysis of House Bill 4851 dated 10-5-99.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, none of the bills is expected to have a significant impact on state government. (2-7-00)

ARGUMENTS:

For:

Though great strides have been made in increasing the number of people willing to donate organs and tissue, there are still shortages of available organs. Reportedly, about 300 people die each year in Michigan while waiting for a transplant. House Bills 4383 and 4384 should help the situation by addressing a few problem areas. For example, if a person has indicated that he or she wishes to be a donor, a family member could not revoke the designation after the person's death. Further, many people designate a person as a patient advocate to help make medical decisions when they are no longer competent to do so. Currently, a patient advocate's authority expires upon the death of the patient. Since the decision to donate an organ or tissue may not be able to be made until after the patient's death, it is important to extend the advocate's authority past the point of death, but only for the purpose of organ donation. The bills should be supported as they would serve to clarify and strengthen existing legislation.

For:

House Bill 5015 would protect Michigan's transplant infrastructure by providing a mechanism whereby state hospitals could get first priority to be designated as recipients for donated organs. If people knew that they could designate an organ to a specific hospital rather than have it go into a national pool, they might be encouraged to become an organ donor. Further, House Bill 5023 would bring additional attention to the need for donated organs by allowing hospitals to contract with attorneys and certified public accountants to explain the benefits of organ donation to potential donors, and to assist hospital personnel in obtaining the necessary written consent from family members of a deceased person. A side benefit to this legislation could be to raise the consciousness of professionals such as attorneys and CPAs, who could pass information about organ donation to clients when setting up trusts or drafting wills.

Response:

Neither of these pieces of legislation are needed. People can donate an organ to a specific hospital now. It is only when an organ is not designated as going to a specific person or place that it is turned over to federally designated organ procurement organization for that region. Further, hospitals can hire attorneys, accountants, or anyone that they want to assist hospital personnel in obtaining consent for organ donations. Adoption of these bills could create confusion rather than bringing clarity.

Rebuttal:

If indeed the bills reflect current practice, then little harm could be done by codifying those practices. Besides, if the bills do nothing more than emphasize that organs can be designated to a specific hospital or that people can be hired to help hospitals obtain consent for organ donations, they still should be supported. Anything that brings more attention to the need for organ donations, or makes the law surrounding organ donations more understandable, will ultimately save lives.

POSITIONS:

The Gift of Life Transplant Society supports the bills. (2-8-00)

The Office of the Secretary of State supports House Bill 4383. (2-7-00)

The Michigan Health & Hospital Association (MHA) supports House Bills 5015 and 5023. (2-7-00)

The Henry Ford Health System supports House Bill 5015. (2-8-00)

The Minority Organ Tissue Transplant Program supports House Bill 5023. (2-18-00)

The National Association of Black Accountants - Detroit Chapter supports House Bill 5023. (2-26-00)

The Department of Community Health supports House Bills 4383 and 4384 and has no position on House Bill 5023. (4-19-00)

Analyst: S. Stutzky

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.