

ORGAN DONATIONS

House Bill 5015 as passed by the House
House Bill 5023 as passed by the House
Sponsor: Rep. Keith Stallworth

Committee: Health Policy
Second Analysis (8-10-00)

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 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 into a 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 into a 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 to 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, neither of the bills is expected to have a significant impact on state or local government. (7-26-00)

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. 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. Often, people develop a concern for or loyalty to a particular hospital. 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.
(7-27-00)

The Michigan Health & Hospital Association (MHA) supports the bills. (7-28-00)

The Henry Ford Health System supports House Bill 5015. (7-28-00)

The Minority Organ Tissue Transplant Program supports House Bill 5023. (8-7-00)

The National Association of Black Accountants--Detroit Chapter supports House Bill 5023. (8-10-00)

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.