

ORGAN DONATIONS: PROHIBIT VETO BY FAMILY MEMBER

**House Bill 4479 as passed by the House
Second Analysis (4-10-03)**

**Sponsor: Rep. John Gleason
Committee: Health Policy**

THE APPARENT PROBLEM:

The state health code allows individuals “of sound mind and 18 years of age or more” to give all or any part of their bodies for a variety of purposes--including medical or dental education, research, therapy, and transplantation--with the gift to take effect upon the individual’s death. Such a gift may be made by will or by means of another document, such as a uniform donor card. The health code also lists other people who can donate (in descending order of priority and when people in prior classes are not available at the time of death) a dead person’s body or parts, as long as neither the dead person him- or herself, nor any of the people in the same or earlier category on the list, had given “actual notice of contrary indications”. The prioritized list contains the following individuals, in descending order of priority: the dead person’s spouse; adult son or daughter; either parent; adult brother or sister; guardian at the time of death; any other person authorized or under obligation to dispose of the body. These provisions have been in the health code since the code was enacted in 1978. In 1986 the health code’s organ donation provisions were amended to require hospitals both to formulate hospital policies for organ donation requests and to designate representatives ask persons on the prioritized list to consent to the donation of suitable organs, tissues, and other body parts. Requests cannot be made when objections by the patient or deceased patient or his or her family (or other representatives) are known in advance.

According to a 1986 attorney general’s opinion (No. 6369), a donor’s next of kin does not have the right to cancel or negate the gift once the donor has died, though the validity of a gift may be challenged in proceeding brought under the Revised Probate Code. The attorney general also opined that a hospital in which an organ donor has died and which has knowledge of the gift may, but is not required to, inform the next of kin of the gift. Nevertheless, hospitals are understandably reluctant to simply proceed with the removal of organs or the transfer of

the cadaver without speaking to the relatives about it, and unfortunately, it is unclear what a hospital should do if a conflict arises between a deceased individual who had provided that his or her organs be donated and the next of kin, who believes, for whatever reason, that the person did not want to donate his or her organs. Individuals do not always discuss their organ donation preferences with their family members. A mother who is dealing with the loss of her son may be thrown completely off guard when she is asked to consent to authorize a donation of his organs, refuses, and then finds out that her son has written his wish to be an organ donor in his will without even telling her.

When organs are to be used for transplants, time is crucial. About 150 Michiganians die each year waiting for organ transplants, and proponents of organ donation want to be sure that individuals’ express wishes to donate organs are being respected. Legislation has been introduced to specify in statute that an individual’s gift of his or her own body or organs is irrevocable once he or she has died, and to specify that hospital representatives do not have to get consent from persons on the prioritized list, if an individual had made such a gift himself or herself.

THE CONTENT OF THE BILL:

The bill would amend the Public Health Code to specify that if an individual had made a gift of his or her body or organs for the purposes of education, research, therapy, or transplantation, a hospital representative would not be required to make a request for consent from a person on the prioritized list, unless the gift had been revoked at some point prior to the individual’s death. The bill would also do the following:

“Contrary indications”/ “express unwillingness”. Under the code, a donee may not accept an anatomical gift, if the donee had actual notice of “contrary indications” by the dead person. Nor may

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a hospital representative request a gift if he or she had actual notice of “contrary indications” by the patient or dead person. The bill would change these prohibitions so that a donee could not accept a gift, and a hospital representative could not request a gift, if they had actual notice that the patient or dead person “had expressed an unwillingness to make the gift”.

Log requirements. Each hospital is required to maintain a hospital organ donation log sheet, with required information, including the name and age of each patient or deceased person for whom a request was made and the name and signature of the person making the request. The bill would eliminate the requirement to record the name and signature of an individual making a request. Also, the bill would add a requirement that the hospital representative record in the log a gift made by an individual himself or herself. (Currently, the code specifies only that the representative must record gifts made by proxy.)

MCL. 333.10102a

BACKGROUND INFORMATION:

As introduced, House Bill 4479 would have amended a section of the bill that House Bill 4125 proposes to amend. House Bill 4125 was reported by the House Health Policy Committee and passed by the House earlier this session. Among other things, House Bill 4125 would allow an individual to make an anatomical gift on his or her driver’s license or state identification card, add a patient advocate to the top of the prioritized list, and would specify that individuals on the prioritized list would only be able to make an anatomical gift on behalf of a deceased individual if the individual had not already made an organ donation him- or herself. For more on House Bill 4125 and its proposed changes to organ donation requirements, see the House Legislative Analysis Section’s first analysis of House Bills 4125 and 4126, dated 3-19-03.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill has no fiscal implications. (4-8-03)

ARGUMENTS:

For:

Provisions allowing individuals to make gifts of their organs in their wills or on uniform organ donor cards are premised on the individual’s right to give the gift

of continued life to those who will die without a transplant or to those who will eventually benefit from the educational use of the cadaver. The entire justification for authorizing relatives and others to make donations on behalf of deceased individuals is that they presumably know what the individual him- or herself would have wanted. During the first two months of 2003, 21 Michiganians died waiting for transplants. While it is unclear how often family members overrule a deceased relative’s express desire to be an organ donor, one time is one time too many. The emotional impact of the death of a loved one should not be underestimated, and hospitals do everything they can to ensure that relatives are at peace with any plans for the disposition of a loved one’s organs. Still, it would be wrong to allow relatives’ emotions or confusion about why they did not know about an individual’s plans for his or her organs to trump those plans. Although the attorney general’s opinion already states much of what the bill would put in statute, the bill would certainly clarify organ donation and organ donation request procedures. The bill, in conjunction with House Bills 4125 and 4126, would help streamline these procedures and would thereby help eliminate confusion surrounding the process.

Those familiar with the process by which hospitals log requests for organ donations suggest that it is impractical to require the representative to record his or her name and signature on the log when making the request. About 20 percent of the requests are made from outside the hospital—for instance, by a representative of Gift of Life—and since the requirement was added, hospitals have begun keeping electronic logs anyway. Therefore the signature requirement has become somewhat cumbersome. Moreover, federal regulators have their own requirements, which do not require a hospital representative’s signature, and those requirements work quite well. Nonetheless, the federal regulators do require compliance with state law, and so have begun asking to seek the hospital representatives’ signatures. Since federal requirements do not require the signature, it seems appropriate to simply get rid of the state requirement altogether.

Response:

According to a representative of the Michigan Health and Hospitals Association, hospitals are supportive of the bill’s concept, but emphasize that they do encounter situations where there is confusion between the wishes of the deceased and the understanding of family members. Although the legislation as it is written would clear up some of the legal issues, hospitals still want to ensure that family

members are comfortable with the donation of their loved one's bodies, organs, and tissues.

In a related matter, based on the attorney general's opinion, it appears that the validity of a gift could still be challenged in a proceeding brought under the Revised Probate Code. Perhaps the legislature should clarify this issue as well.

POSITIONS:

The Department of Community Health supports the bill. (4-1-03)

The Gift of Life Transplant Society of Michigan supports the bill. (4-2-03)

The National Kidney Foundation of Michigan supports the bill. (4-2-03)

A representative of the Michigan Health and Hospital Association testified that the association was supportive of the bill in concept but would like to continue a dialogue to work through issues surrounding possible family conflicts. (4-1-03)

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■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.