

Legislative Analysis



ORGANS & TISSUES: AGREEMENTS BETWEEN MEDICAL EXAMINERS & TRANSPLANT ORGS

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House Bill 4938 as enrolled

Public Act 176 of 2005

Sponsor: Rep. Joe Hune

House Committee: Health Policy

Senate Committee: Health Policy

First Analysis (8-18-06)

BRIEF SUMMARY: The bill would require county medical examiners, after taking charge of a body outside of a hospital and determining that it may be suitable for the donation of physical parts, to contact the state's federally designated organ procurement organization.

FISCAL IMPACT: The bill has minimal fiscal impact on state government and may have local government cost implications. The bill will add some complexity to the current procedure for a medical examiner to follow. The bill indicates that the county shall cover usual and customary procedures and the donation organization shall cover certain extraordinary costs.

THE APPARENT PROBLEM:

Over 3,000 Michigan residents currently await an organ for transplant. In 2004, 150 people on the transplant list died before a matching organ was made available. Hospitals in the state already have policies regarding anatomical gift requests in place, and individuals trained in making requests for donations are available to make such requests of family or friends designated under current laws to consent to the donation. However, if a person dies outside of a hospital, the county medical examiner usually takes charge of the body and sometimes must perform an autopsy. In addition, some hospital deaths also necessitate the need for an autopsy; for example, when the person was a victim of a crime. But, reportedly, even when it is known that the deceased had chosen to be an organ donor or had expressed a desire to donate his or her organs, some medical examiners refuse to release the body in a timely manner while the organs and tissues are still viable for transplantation. According to Gift of Life, Michigan's federally designated organ procurement organization, "a total of 75 organs were refused by Michigan medical examiners for transplant" between 1999 and 2004. The mortality rates of the patients who could have received those specific organs were double that of the national average during the same time period.

Several states have enacted legislation that facilitate closer communications between medical examiners and the states' organ procurement organizations and require expedited autopsies or examinations of deceased individuals who are known to be organ donors or whose families have consented to donation. Legislation has been introduced to enact similar provisions.

THE CONTENT OF THE BILL:

The bill would add a new section to the act that regulates county medical examiners, Public Act 181 of 1953 (MCL 52.209), to require a medical examiner to enter into an agreement regarding the donation of organs and tissues with the federally designated organ procurement organization and the eye and tissue organization that coordinates the recovery and allocation of anatomical donations in that county. This would only apply if the medical examiner is contacted by one or both of the organizations.

The bill would:

- Require the M.E. to take charge of a body if a county M.E. or a designee received notification of a death requiring an investigation. (This would not apply if the notification was from a hospital representative.)
- Require the M.E. or designee to contact the state's federally designated organ procurement organization if, after viewing the body and inquiring into the cause and manner of death, it was determined that the body may be suitable for the donation of physical parts.
- Require each county M.E. to enter into an agreement with the organ procurement organization and the eye and tissue organization that coordinates the recovery and allocation of anatomical donations in that county. This would only apply if the M.E. was contacted by one or both of the organizations.
- Require the agreement to outline the procedures and protocols of each party to assure that transplantable organs, tissues, and eyes were obtained from potential donors.
- Specify that if there were any extraordinary medical examinations necessary prior to the removal of organs, tissues, or eyes that the organization (not the county) would have to cover those costs.
- Allow an M.E. or designee to release information to the organizations necessary to identify potential donors of organs, tissues, or eyes and seek consent for those donations in accordance with provisions of the Public Health Code.
- Prohibit an M.E. or designee from discussing the option of organ donation with any individual with the authority to make a gift under Section 10102 of the Public Health Code (a spouse, adult child, patient advocate, parent, sibling, etc.).

In addition, if an investigation of the cause and manner of death is required under the act, regardless of whether or not the death occurred in a hospital, and the M.E. or designee noticed that the individual was a donor or that a gift of all or a physical part of the deceased's body had been made in accordance with Part 101 of the Public Health Code, the autopsy would have to be conducted within a time period that would permit organs,

tissues, and eyes to remain viable for transplant. If that cannot be done, a health care professional authorized to remove anatomical gifts from donors, upon notification to the M.E. or designee, could remove the donated tissues and/or organs so that the viability of the donations for transplant would be preserved.

If the M.E. or designee determined that a tissue or organ could be related to the cause of death, he or she could request to be present during the removal of the donated organs or request a biopsy of the donated organs.

BACKGROUND INFORMATION:

The following information was provided by the Senate Fiscal Agency in an analysis of HB 4938 dated 9-28-05.

Public Act 181 of 1953 requires a county medical examiner or deputy county medical examiner to investigate the cause and manner of death of an individual under each of the following circumstances:

- The individual dies by violence.
- The individual's death is unexpected.
- The individual dies without medical attendance by a physician, or while under home hospice care without medical attendance by a physician or a registered nurse, during the 48 hours immediately preceding the time of death, unless the attending physician is able to determine accurately the cause of death.

Additionally, if a prisoner in a county or city jail dies while imprisoned, the county medical examiner or deputy county medical examiner must examine the deceased prisoner's body.

Under Part 101 of the Public Health Code, an individual who is at least 18 years old and of sound mind may make a gift of all or a physical part of his or her body, effective upon his or her death, to any of the following:

- Any hospital, surgeon, or physician for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation.
- Any accredited medical or dental school, college, or university for education, research, advancement of medical or dental science, or therapy.
- Any bank or storage facility for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation.
- Any specified individual for therapy or transplantation.
- Any approved or accredited school of optometry, nursing, or veterinary medicine.

Also under Part 101, upon or immediately before the death of an individual who has not made an anatomical gift as described in the code, any of the following individuals, in the following priority, may make a gift of all or a physical part of the decedent's body: a patient advocate designated under the Estates and Protected Individuals Code who is

authorized to make such a gift; a spouse; an adult son or daughter; either parent; an adult brother or sister; a guardian of the person of the decedent at the time of death; and any other individual who is authorized or under obligation to dispose of the body.

The chief executive officer of each hospital must develop and implement a policy regarding anatomical gift requests. At a minimum, the policy must provide for the designation of individuals who will make anatomical gift requests; for a clergy of the patient's religious preference, if known, to be made available upon request to the individuals to whom a request is made; the development of a support system that facilitates the making of requests; and the maintenance of an organ donation log sheet. At or near the death of a patient whose body, according to accepted medical standards, is suitable for donation or for the donation of physical parts, an individual designated to make requests under the policy must request one of the individuals listed above, in the order of stated priority, to consent to the gift.

The hospital's designated individual may not make a request if any of the following conditions exists:

- He or she has actual notice that the patient or decedent had expressed an unwillingness to make the gift.
- He or she has actual notice that an individual with a higher priority or equal priority opposes the making of a gift.
- He or she has knowledge that the gift is contrary to the decedent's religious beliefs.

ARGUMENTS:

For:

Organs and tissues remain viable for transplantation for only a short time. With over 3,000 residents waiting life-saving or life-improving transplants, it is imperative that the organs and tissues of every identified donor be recovered in a timely manner. However, it is reported that some medical examiners either refuse to make bodies of donors available to the state's organ procurement organization or do not release them until after the organs and tissues are no longer viable for transplantation.

A case on point involved five-month-old Kyle Ray Horning, who died in a Saginaw hospital last October. His family approached the hospital and Gift of Life, Michigan's federally designated organ procurement organization, about donating their baby's organs so that other children might live. However, the county medical examiner refused to consent to the donation of the baby's organs.

House Bill 4938, which had passed both Houses of the legislature and been ordered enrolled, was on the Governor's desk awaiting her signature. Calls by the bill's sponsor and another member of the House of Representatives to the Governor spurred her to sign the bill immediately. The bill took effect immediately upon filing and within hours

Kyle's heart went to a four-month girl in Missouri, his liver to a five-month boy in Indiana, and his kidneys to a 42-year-old woman in Pennsylvania.

The bill would not take authority away from medical examiners, but it would require closer and quicker communication between medical examiners and the organizations in the state that coordinate the recovery and allocation of anatomical donations. This should enable more organs and tissues to be recovered, especially if an inquiry into the cause and manner of death reveals no reason for the donation to be delayed.

Against:

Some may be concerned that undue pressure could be brought upon medical examiners to rush investigations into the cause of death or autopsies so that the body of an organ donor could be released for the organs and tissues to be harvested. Sometimes it is not clear at first that foul play could have been involved. Medical examiners need adequate time to fulfill their responsibilities to the public.

Response:

The bill would merely call for expedited autopsies of known donors, not interfere with a medical examiner performing his or her duties thoroughly. If, for any reason, the M.E. could not perform the autopsy before the organs and tissues of a known donor were no longer viable for transplantation, then specially trained health care professionals could do so. The M.E. could be present when the organs or tissues were harvested, or he or she could request biopsies of any organs or tissues thought to be related to the death. This is an important provision because even if the deceased was a victim of a crime, organs or tissues not related to the person's death or needed as evidence of the crime could still be used. For example, a person who died from gunshot wounds to the chest or abdomen may still be a viable donor of corneas that could be used to save the vision of another.

According to information provided by Gift of Life, at least four other states have enacted similar legislation to House Bill 4938. A 2003 study looked into the issue of whether the expedited autopsies interfered with criminal investigations and found "that an exhaustive case law review revealed **no instance** in which a state was unable to adequately investigate a crime or to prosecute a criminal defendant because necessary evidence had been altered by organ donation." (Shafer, T. et. al. *Vital Role of Medical Examiners and Coroners in Organ Transplantation*. American Journal of Transplantation 2003; 4; 160-168)

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