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Senate Bill 485 (as introduced 9-11-13)
Sponsor: Senator Bruce Caswell
Committee: Health Policy

Date Completed: 9-23-14

CONTENT

The bill would amend the Public Health Code to require the Department of Community Health (DCH) to establish an Unclaimed Body Program within 120 days after the bill took effect, and make other revisions to procedures for the final disposition of unclaimed bodies. Specifically, the bill would do the following:

- **Require a person in charge or control of a presumed unclaimed body to refer the matter to the county medical examiner rather than the DCH.**
- **Require the medical examiner to make a reasonable attempt to locate an individual with final disposition authority over the body, and designate the body as unclaimed if no such person could be found.**
- **Authorize medical examiners to refer unclaimed bodies suitable for instruction, study, or use for allocation to hospitals and educational institutions; and refer unsuitable bodies to licensed funeral establishments designated as "preferred providers" for final disposition.**
- **Require a county medical examiner to issue a request for proposals to become a preferred provider to handle unclaimed bodies within the medical examiner's jurisdiction.**
- **Limit the amount paid to a preferred provider to the amount paid by the Department of Human Services for final disposition of an unclaimed body.**
- **Grant immunity from liability to certain entities for actions taken to comply with the bill's requirements.**
- **Include an organ procurement organization among the entities that may be designated to perform certain duties of the DCH related to the scientific use of unclaimed bodies.**

Designation of Unclaimed Body

The Code defines "unclaimed body" as a dead human body for which the deceased has not provided a disposition, for which an estate or assets to defray costs of burial do not exist, and that is not claimed for burial by a person, relative, or court-appointed fiduciary who has the right to control disposition of the body. The bill would refer to final disposition rather than burial.

Currently, an official of a public institution or a State or local officer in charge or control of an unclaimed body that would have to be buried at public expense must use due diligence to notify the people with authority to control the interment or disposition of the body under the Estates and Protected Individuals Code (EPIC). If there is no such person to direct the disposition of the body in a manner other than as provided in the Public Health Code, the body becomes available to the Department of Community Health. Upon the DCH's written

request for notification concerning unclaimed bodies coming under his or her jurisdiction, the officer must notify the Department immediately following 72 hours after death. When possible, the officer must state the name, age, sex, religion, and cause of death of the deceased, and must release the body according to the Department's regulations or instructions.

Under the bill, instead, any person, including an official of a public institution or a State or local officer, who was in charge or control of a presumed unclaimed body would have to refer the matter to the county medical examiner. The county medical examiner would have to ascertain, in cooperation with the referring person, whether the decedent's body should be designated as an unclaimed body. The medical examiner would have to make a reasonable attempt in good faith to locate an individual who had the authority to make decisions regarding funeral arrangements and the handling and disposition of the decedent's body as provided in EPIC, including an attempt to determine if the decedent was eligible for payment of funeral and burial expenses as an honorably discharged member of the United States Armed Forces. After conducting the attempt, if the medical examiner were unable to locate an individual with final disposition authority, he or she would have to designate the decedent's body as an unclaimed body.

If the deceased were an honorably discharged member of the U.S. Armed Forces, the medical examiner would have to notify and surrender the body to the appropriate personnel.

Under the Public Health Code, if the deceased is a member of a religious faith maintaining a benevolent association that will provide for burial pursuant to the tenets of the religion, the DCH must notify the association of the death and surrender the body to it upon request. The bill would refer to the medical examiner rather than the DCH in this requirement.

Unclaimed Body Program; Preferred Providers

Within 120 days after the bill took effect, the DCH would have to establish or contract to establish the Unclaimed Body Program. The DCH would have to ensure that the Program did all of the following:

- Facilitated the efficient transfer and proper final disposition of unclaimed bodies in Michigan.
- Referred unclaimed bodies suitable for instruction, study, or use for allocation to hospitals and educational institutions as provided in the Code.
- If an unclaimed body were not suitable for instruction or study or were declined for use by a hospital or educational institution, facilitated the transfer of the body to a preferred provider (described below) for final disposition.
- Notified the Department of Human Services (DHS) whether an unclaimed body was referred for instruction, study, or use by a hospital or educational institution or was transferred to a preferred provider.

A county medical examiner would have to issue a request for proposals for entities to apply to become a preferred provider for the county or counties under the medical examiner's jurisdiction. To be a preferred provider, an entity would have to be a funeral establishment licensed under the Occupational Code. Within 60 days after the bill took effect and every three years after the bill's effective date, the county medical examiner would have to notify the DCH of all entities that were approved to be preferred providers.

An approved preferred provider would have to handle unclaimed bodies and supervise their final disposition in Michigan for a cost of not more than the amount paid by the DHS for that disposition.

A county medical examiner would have to allocate unclaimed bodies to preferred providers within his or her jurisdiction on a rotational basis. The medical examiner could allocate an unclaimed body to a preferred provider regardless of its location in the rotation, however, if he or she determined it appropriate for the efficient and effective administration of the Unclaimed Body Program in his or her jurisdiction.

A county medical examiner could apply for assistance from the DHS to implement all of these requirements.

A medical examiner's designation of an unclaimed body could be relied upon by the preferred provider handling the body and supervising its final disposition, and by the cemetery or crematory conducting the final disposition.

A county medical examiner, preferred provider, funeral director, designated hospital or educational institution, or cemetery or crematory would not be liable for damages arising out of actions taken in an effort to comply with the bill's requirements.

If the final disposition of an unclaimed body were cremation, the preferred provider could provide for a proper disposition of the cremated remains subject to the requirements of Section 1809a of the Occupational Code. (Under that section, a person licensed in the practice of mortuary science is immune from civil liability for the proper disposition of unclaimed cremated remains if the disposition was made at least six months after the date of cremation and at least 30 days after notice was sent to a person having the right under EPIC to make decisions relating to disposition of the decedent's body. That section defines "proper disposition" as interment, entombment, or inurnment of unclaimed cremated remains in a Michigan cemetery.)

An entity approved to be a preferred provider would have to maintain its active establishment license under the Occupational Code to maintain eligibility as a preferred provider. Any change in the status of that license would revoke the licensee's preferred provider designation until the provider was redesignated as a preferred provider.

Scientific Use

Under the Public Health Code, the DCH must receive dead human bodies or parts of dead human bodies that are designated for scientific use, and allocate them to hospitals and educational institutions that need them for use in medical instruction or for the purpose of instruction, study, and use in health sciences education. The bill would refer to dead bodies or body parts that are designated for scientific use or that are referred to the DCH by the medical examiner, as provided in the bill.

The Code requires the DCH to keep permanent records of the receipt and disposition of the bodies and parts. Under the bill, the Department would have to keep permanent records of receipt, allocation, and final disposition.

The Code authorizes the DCH to designate Michigan State University, Wayne State University, or the University of Michigan to perform its duties and responsibilities pertaining to unclaimed bodies referred for scientific use. If designated, a university may exercise all of the relevant powers of the DCH.

The bill would refer to an organ procurement organization in addition to the specified universities. "Organ procurement organization" would mean that term as it is defined in Section 10102 (i.e., a person certified by the Secretary of the U.S. Department of Health and Human Services as a qualified organ procurement organization).

Under the bill, a medical examiner, in compliance with the Unclaimed Body Program, could refer an unclaimed body suitable for instruction, study, or use for allocation to a hospital or educational institution as provided in the Code. If a body designated as an unclaimed body were not suitable for these purposes, the medical examiner would have to refer it to a preferred provider for final disposition. The medical examiner would have to authorize the final disposition as provided in Section 3206(8) of EPIC. (Under that section, if there is no person to exercise the rights and powers to make decisions about funeral arrangements and the handling or disposition of a decedent's body, one of the following, as applicable, must exercise those rights and powers:

- Except as otherwise provided, the county public administrator, if willing, or the medical examiner for the county where the decedent was domiciled at the time of death.
- If the decedent was incarcerated in a State correctional facility at the time of death, the Director of the Department of Corrections or his or her designee.)

Receipt of Unclaimed Body

Currently, a hospital or educational institution that receives an unclaimed body must hold it for 30 days, during which the body is subject to identification and claim by a person with authority over the body under EPIC. The bill would extend this requirement to a preferred provider that received an unclaimed body.

An unclaimed body retained by the DCH for scientific or educational purposes must be embalmed and disposed of in accordance with standards adopted under DCH rules. The bill would delete this requirement.

A hospital or educational institution that received an unclaimed body for instruction, study, or use would have to handle the body in compliance with the Unclaimed Body Program.

The Code requires a person receiving an unclaimed body for educational purposes to bear all reasonable expense incurred in the preservation and transportation of the body, and to keep a permanent record of bodies received, including the identification number, name, age, religion, sex, last place of residence, and the source and disposition of the body. The person must dispose of the body in accordance with the standards adopted under DCH rules. The bill would refer to a hospital or educational institution that received an unclaimed body for instruction, study, or use, rather than a person receiving an unclaimed body for educational purposes. Also, the bill would require the hospital or educational institution to handle the body in compliance with the Unclaimed Body Program, rather than dispose of it according to DCH standards.

Postmortem Examination

Unless specifically authorized by law, the Code prohibits a person from conducting a postmortem examination of an unclaimed body without the express permission of the DCH Director. If a person fails to notify the DCH of an unclaimed body or to promptly release an unclaimed body as required, causing it to become unfit for scientific or educational purposes, the DCH must certify the failure, and the body must be interred at the expense of those responsible for the failure.

The bill would refer to a failure to notify the medical examiner rather than the Department. The bill also would refer to the final disposition of the body, rather than its interment.

DCH Standards

The Code allows the DCH to adopt standards, through the promulgation of rules, for the transportation, reception, preservation, storage, records, and allocation of unclaimed bodies

or body parts. Under the bill, the standards could include standards applicable to the proposed Unclaimed Body Program.

MCL 333.2652 et al.

BACKGROUND

The Department of Human Services provides assistance to cover burial costs through the State Emergency Relief (SER) program. In the case of an unclaimed body, the county medical examiner or a public administrator may apply for SER burial benefits as the decedent's authorized representative if he or she has offered the body to at least one of the universities designated in the Public Health Code and the donation has been declined.

Covered burial services include any goods or services normally provided to bury, cremate, or donate a human body, including the following:

- Goods and services provided by a funeral director.
- An outside receptacle that is required by the cemetery and that consists of a metal or concrete rough box.
- A single burial space.
- Opening and closing the grave.
- The use of cemetery equipment.
- Transportation.
- Clothing.
- Clergy person's honorarium.

According to the DHS's SER Manual, the maximum reimbursement for final disposition of an unclaimed body is \$800.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

Under current policy, an unclaimed body is handled by a funeral home, with the costs being covered by the Department of Human Services at reimbursement rates usually set in budgetary boilerplate. The bill would direct that a preferred provider, which would have to be a licensed funeral establishment, supervise the final disposition of unclaimed bodies "for a cost of no more than the amount paid by the [DHS] for that disposition". Therefore, there would be no net cost increase for disposition of unclaimed bodies due to the legislation. Current DHS policy manuals set the maximum reimbursement for unclaimed bodies at \$800.

The bill would have an impact on local government. At present, county medical examiners are in charge of the disposition of unclaimed bodies and may apply for State Emergency Relief burial of an unclaimed body that has been offered to a university medical school but has been declined. The bill instead would require county medical examiners to contract with a funeral establishment to handle dispositions. The bidding process would result in minor costs to the counties, but the legislation would permit the counties to apply for assistance from the DHS to cover those costs, so those minor costs would more likely accrue to the State.

Fiscal Analyst: Steve Angelotti

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.