

DEATH CERTIFICATIONS, INVESTIGATIONS, AND RECORDS

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House Bill 5043 as reported from committee
Sponsor: Rep. Julie M. Rogers

Analysis available at
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House Bill 5044 as reported from committee
Sponsor: Rep. Mike Mueller

Committee: Health Policy
Complete to 6-5-24

SUMMARY:

House Bills 5043 and 5044 would respectively amend the Public Health Code and 1953 PA 181 (which governs county medical examiners) to change provisions related to certifications, investigations, and records of deaths. The bills would require death reports to be made through a web-based system and would change or remove conditions under which a death must be certified by, or referred to, a county medical examiner. In addition, it is now a misdemeanor for a physician to refuse or fail to certify a death record or provide relevant information. The bills instead would subject the physician to license sanctions for doing so.

House Bill 5043 would amend several sections of the Public Health Code that deal with the certification and reporting of death records.

The code requires a funeral director who first assumes custody of a dead body to report the death and obtain medical certification of it. The medical certification portion of the death record now must be completed and signed no later than 48 hours after the death as follows:

- If the death occurred in an institution (i.e., one providing inpatient medical, surgical, or diagnostic care or treatment or nursing, custodial, or domiciliary care):
 - By the attending physician.
 - In the absence of the attending physician, by a physician acting as the attending physician's authorized representative.
 - In the absence of an authorized representative, by the institution's chief medical officer, after investigation and review of the records, or by a pathologist.
- If the death did not occur in an institution:
 - By the attending physician.
 - In the absence of the attending physician, by a physician acting as the attending physician's authorized representative.
 - In the absence of an authorized representative, by the county medical examiner or, in their absence, by the county health officer or the deputy county medical examiner.

Under the bill, the medical certification portion of the death record would have to be completed and certified no later than 48 hours after the death as follows:

- If the death occurred in an institution:
 - By the attending physician.
 - In the absence of the attending physician, by any of the following:
 - A physician acting as the authorized representative of the attending physician.

- The institution's chief medical officer, after review of pertinent records and any other necessary investigations.
 - A pathologist.
- If the death did not occur in an institution:
 - By the physician who was in charge of the care of the deceased for the illness or condition that resulted in their death.
 - In the absence of the physician described above, a physician acting as the authorized representative of that physician.

(The medical certification portion of the death record would still have to be completed and certified by the county medical examiner if an investigation into the cause and manner of death is required by 1953 PA 181, as described related to HB 5044, below.)

Web-based reporting

The bill would require death reports described above to be submitted using the web-based application system established by the Department of Health and Human Services (DHHS) for the registration of deaths. Beginning one year after the effective date of the bill, medical certifications described above would have to be submitted using that system. An individual who completes medical certifications as described above would first have to complete DHHS training to use the system.

Penalties and sanctions

Currently, a physician described above who refuses or neglects to either certify a death record properly presented by a funeral director or furnish information in their possession is guilty of a misdemeanor punishable by imprisonment for up to 60 days or a fine of \$25 to \$100, or both.

The bill would still prohibit a physician described above from refusing or neglecting to certify the death record or provide information, but instead of being a misdemeanor, a violation would be grounds for sanction by a disciplinary subcommittee of the applicable licensing board or subfield or specialty task force. Sanctions could include license denial, revocation, restitution, probation, suspension, or limitation; a reprimand; a fine; or a combination of those sanctions.

Referral to county medical examiner

The code now provides that a case must be referred to the county medical examiner for investigation to determine and certify the cause of death if any of the following apply:

- The death occurs more than 10 days after the deceased was last seen by a physician.
- The cause of death appears to be something other than the illness or condition the deceased was being treated for.
- The attending physician cannot accurately determine the cause of death.

If the county medical examiner determines that the case is not within their jurisdiction, they must refer it back to the deceased's physician within 24 hours for completion of the medical certification.

The bill would eliminate these provisions.

Delay in determining cause of death

In addition, the code provides that, if the cause of death cannot be determined within 48 hours, the medical certification may be completed as provided by DHHS. The attending physician or

county medical examiner must give the funeral director in custody of the body notice of the reason for the delay, and final disposition must not be made until authorized by the attending physician or county medical examiner.

The bill would revise these provisions to require notice of the reason for the delay to be given to the funeral director by, and provide that final disposition cannot be made in these cases until it is authorized by, one of the following individuals:

- The attending physician or county medical examiner.
- The attending physician's authorized representative.

MCL 333.2804 et seq.

House Bill 5044 would amend 1953 PA 181, which governs county medical examiners. The act now requires a county medical examiner or deputy county medical examiner to investigate the cause and manner of death of an individual under any of the following circumstances:

- The individual dies by violence.
- The individual's death is unexpected.
- The individual dies as the result of an abortion.
- Unless the *attending physician*, if any, is able to determine accurately the cause of death, under either of the following circumstances:
 - The individual dies without medical attendance by a physician *during the 48 hours* immediately preceding the time of death.
 - The individual dies 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.

The bill would change the last of the bulleted circumstances where italicized above and below. Under the bill, a county medical examiner or deputy county medical examiner would have to investigate the cause and manner of death of an individual under any of the following circumstances:

- The individual dies by violence.
- The individual's death is unexpected.
- The individual dies as the result of an abortion.
- Unless the *attending physician or a physician acting as the authorized representative of the attending physician*, if any, is able to determine accurately the cause of death, under either of the following circumstances:
 - The individual dies without medical attendance by a physician *within the year* immediately preceding the time of death.
 - The individual dies while under home hospice care without medical attendance by a physician or a registered nurse within the 48 hours immediately preceding the time of death.

In addition, the act now requires a physician, an individual in charge of a hospital or institution, or any other individual with first knowledge of the death of an individual who died without medical attendance during the 48 hours prior to the time of death to immediately notify the county medical examiner or deputy county medical examiner unless the *attending physician*, if any, is able to accurately determine the cause of death.

The bill would retain the above provision, but would change *attending physician* to *attending physician or a physician acting as the authorized representative of the attending physician*.

The bill will not take effect unless House Bill 5043 is also enacted.

MCL 52.202 and 52.203

BRIEF DISCUSSION:

According to committee testimony, a medical certification of death must be obtained for an individual before their funeral arrangements can go ahead. While these certifications are supposed to be made within two days (48 hours) of the person's death, 25% of death certificates in 2023 took four days or longer to be medically certified. This delay can create problems for funeral directors and added stress for families who are already having to navigate their loss and their grief. It is hoped that the bills, by streamlining the process and requiring use of an electronic death registration system that is already in place, will improve the process for filing death certificates and so address at least some of the issue of late medical certifications.

FISCAL IMPACT:

House Bills 5043 and 5044 would not have a significant fiscal impact on state expenditures to the Department of Health and Human Services but may reduce costs to local units of government. County medical examiner costs may be reduced if the bills' provisions have the effect of reducing the volume of work that is done by a local county medical examiner. Although the bills would require submission of certification of death using a web-based application, a system is currently in place through DHHS, the Electronic Death Registration System (EDRS), and no additional funds would be needed to meet the requirements of the bills.

In addition, under House Bill 5043, neglecting or refusing to certify a death record or neglecting or refusing to furnish certain information would no longer be misdemeanors punishable by imprisonment, fines, or both. Depending on the number of people that were charged under provisions the bill would eliminate, the bill could result in a decrease in costs for local units of government related to county jails, local misdemeanor probation supervision, and local court systems. The costs of local incarceration in county jails and local misdemeanor probation supervision vary by jurisdiction. There could also be a decrease in penal fine revenues, which would decrease funding for public and county law libraries, the constitutionally designated recipients of those revenues.

POSITIONS:

Representatives of the following entities testified in support of the bills (5-16-24):

- Michigan Funeral Directors Association
- Michigan Association of Medical Examiners
- Michigan State Medical Society

The following entities indicated support for the bills:

- Department of Health and Human Services (5-16-24)
- Michigan College of Emergency Physicians (5-22-24)

- Service Corp International (5-22-24)

The Michigan Association of County Clerks indicated support for HB 5043. (5-16-24)

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