

MEDICAL CERTIFICATIONS OF DEATH

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House Bill 5615 (H-1) as reported from committee
Sponsor: Rep. Julie Calley

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5616 (H-1) as reported from committee
Sponsor: Rep. Tyrone Carter

Committee: Local Government and Municipal Finance
Complete to 5-25-22

SUMMARY:

House Bills 5615 and 5616 would respectively amend the Public Health Code and 1953 PA 181 (which governs county medical examiners). Under current law, the medical certification portion of a death record must be completed and certified by a physician or county medical examiner. The bills would additionally allow nurse practitioners and physician's assistants to do so under specified circumstances. In addition, it is currently a misdemeanor for a relevant health professional to refuse or fail to certify a death record or provide relevant information concerning a death. The bills instead would subject such a health professional to licensure sanctions. The bills also would change conditions under which a death must be referred to a county medical examiner, require death reports and certifications to be submitted through a web-based application system, and make related changes as described below.

House Bill 5615 would amend several sections of the Public Health Code that deal with 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:

- By the attending physician.
- In the absence of the above, by a physician acting as the attending physician's authorized representative.
- In the absence of the above, as follows:
 - If the death occurred in an *institution*, by the institution's chief medical officer, after investigation and review of the records, or by a pathologist.
 - If the death occurred outside an institution, by the county medical examiner or, in the absence of the county medical examiner, by the county health officer or deputy county medical examiner.

Institution means a public or private establishment that provides inpatient medical, surgical, or diagnostic care or treatment or nursing, custodial, or domiciliary care to two or more unrelated individuals, including an establishment to which individuals are committed by law.

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 necessary investigation.
 - A pathologist.
 - By a physician's assistant acting in accordance with a written practice agreement described in the Public Health Code.
 - By a *nurse practitioner* acting under a general grant of authority by delegation from a physician to provide the medical certification of death records.
- If the death occurred outside an institution:
 - By the physician who was in charge of the decedent's care for the illness or condition that resulted in the decedent's death.
 - In the absence of the physician described above, a physician acting as the authorized representative of the physician described above.
 - By a physician's assistant acting in accordance with a written practice agreement described in the Public Health Code.
 - By a nurse practitioner acting under a general grant of authority by delegation from a physician to provide the medical certification of death records.

Nurse practitioner would mean a registered professional nurse licensed under the Public Health Code who has been granted a specialty certification as a nurse practitioner by the Michigan Board of Nursing.

However, notwithstanding the above provisions, the medical certification portion of the death record would have to be completed and certified by the county medical examiner if an investigation into the cause and manner of death were required by 1953 PA 181. (See below.)

Infectious agent notification

The bill would add physician's assistants and nurse practitioners to provisions that now require a physician to notify a funeral director of appropriate infectious control precautions to be taken when there is actual knowledge of the presence of an infectious agent in the deceased individual.

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. A physician, physician's assistant, or nurse practitioner who completes a medical certification would have to first complete DHHS training to use the system.

Sanctions and penalties

Currently, a physician described in the above certification provisions who for himself or herself or as the agent or employee of another neglects or refuses to certify a death record properly presented by a funeral director or who refuses or neglects to furnish information in the physician's 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 delete the above provision. Under the bill, a physician (including one acting as an authorized representative), physician's assistant, or nurse practitioner described above who is properly presented a medical certification by a medical director would be prohibited from refusing or neglecting to certify the record or to provide information in the relevant health professional's possession. Violation would be grounds for sanction by a disciplinary subcommittee of a health profession licensing or registration board or subfield or specialty task force. Sanctions would include one or more of the following: license or registration denial, revocation, restitution, probation, suspension, or limitation; a reprimand; or a fine.

Investigation by county medical examiner

Currently, 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:

- 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 for which the deceased was being treated.
- The attending physician cannot accurately determine the cause of death.

If the county medical examiner determines that the case does not fall within his or her jurisdiction, he or she must refer the case back to the deceased's physician within 24 hours for completion of the medical certification.

The bill would eliminate the provisions described above.

In addition, the code requires the county medical examiner to determine the cause of death and complete and sign the medical certification within 48 hours after taking charge of a case in which an investigation is required under 1953 PA 181 (see below). If the cause of death cannot be determined within 48 hours after death, 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.
- The county medical examiner.
- The attending physician's authorized representative.
- A physician's assistant with whom the attending physician has a written practice agreement.
- A nurse practitioner delegated the task by the attending physician.

MCL 333.2804 et seq.

House Bill 5616 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 professional nurse* during the 48 hours immediately preceding the time of death.

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 his or her authorized designee, 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, *physician's assistant, or nurse practitioner within the 30 days* immediately preceding the time of death.
 - The individual dies while under home hospice care without medical attendance by a physician, *physician's assistant, or nurse practitioner* during the 48 hours immediately preceding the time of death.¹

In addition, the act requires a physician, an individual in charge of a hospital or institution, or any other individual with first knowledge of the death to immediately notify the county medical examiner or deputy county medical examiner of an individual who died without medical attendance during the 48 hours prior to the time of death 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 his or her authorized designee*.

The bill will not take effect unless House Bill 5615 is also enacted.

MCL 52.202 and 52.203

¹ Note that currently under these provisions, if the attending physician or his or her designee cannot determine the cause of death, the death of an individual who dies while under home hospice care *with* medical attendance by a registered professional nurse during the previous 48 hours does not have to be investigated. Under the bill, such a death would appear to require investigation unless the nurse had a nurse practitioner specialty certification.

FISCAL IMPACT:

The bills would have no direct fiscal implications for state government, but could have fiscal implications for local units of government.

Although House Bill 5615 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 bill, according to the department.

The bill also would not have a fiscal impact on the Department of Licensing and Regulatory Affairs. The changes the bill would make with respect to grounds for LARA disciplinary investigations would not increase the scope of LARA's responsibilities in any significant way.

For county governments, county medical examiner costs could be reduced if the bills' provisions had the effect of reducing the volume of work that is done by a local county medical examiner.

In addition, under House Bill 5615, 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 actually charged under the provisions that 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 Michigan Funeral Directors Association testified in support of the bills. (5-4-22)

Gift of Life Michigan indicated support for the bills. (5-18-22)

The Michigan Association of Colleges of Nursing indicated support for HB 5615 as introduced. (5-4-22)

A representative of the Michigan Council of Nurse Practitioner testified in support of HB 5615 as introduced and with concerns regarding the H-1 substitute. (5-4-22)

A representative of the Michigan Academy of Physician Assistants testified in support of HB 5615 as introduced and in opposition to the H-1 substitute. (5-4-22)

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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.