House
Legislative
Analysis
Section

House Office Building, 9 South
Lansing, Michigan 48909
Phone: 517/373-6466

ORGAN DONATIONS

House Bill 4383 (Substitute H-1)
House Bill 4384 (Substitute H-1)
Second Analysis (6-7-00)

Sponsor: Rep. Lynne Martinez
Committee: Health Policy

THE APPARENT PROBLEM:

Michigan's voluntary anatomical gift program does not meet the growing demand for organs and tissues. Though great strides have been made in recent years, especially with the enactment of Public Acts 118, 120, and 458 of 1998, which streamlined the donation process, shortages persist. Before the 1998 legislation took effect, Michigan ranked 46th in the nation in terms of organ donors. Since that time, the donor registry has grown from 20,000 to approximately 180,000 and Michigan now ranks 21st in the nation for organ donors. Unfortunately, over 2,500 patients in the state are currently waiting for transplants. It has been estimated that about 300 of them will die this year because not enough organs are available. It is believed that further amendments to the laws governing organ donations may serve to bring additional attention to the need for organ and tissue donors and also could further streamline regulations that may result in a greater number of donated organs and tissue.

THE CONTENT OF THE BILLS:

The bills would amend laws pertaining to making anatomical gifts. Specifically, the bills would do the following:

House Bill 4383 would amend provisions of the Public Health Code (MCL 333.10102 and 333.10104) regarding how a person may signify his or her intent to make an anatomical gift. Currently, a person may make an anatomical gift by will or by another document, provided that the document is signed by or for the donor in the presence of two or more witnesses who must also sign the document or by a uniform donor card or substantially similar document. Under the bill, the required witness signatures would be reduced from two to at least one. The bill would further specify that a personal identification card, or an operator's or chauffeur's license, that contained a statement that the person was an organ and tissue donor, along with the person's signature and the signature of at least one witness, would constitute a document of gift for organ donation. Unless the person specified on the back of his or her license or identification card that he or she intended to make a gift of his or her entire body, the gift would be limited to parts of the body and not the whole. If a would-be donor were unable to sign a gift document, he or she could direct it to be signed on his or her behalf, in his or her presence and the presence of at least one witness who would also have to sign the document. A person's decision to make an anatomical gift of part or all of his or her body either by will or by a document of gift would not be revocable after the person's death.

The bill would also amend these provisions to more clearly prioritize the list of relatives and others who might be decision-makers on behalf of the decedent donor (unless the donor has expressed an unwillingness to make a gift): first a patient advocate designated before April 1, 2000, under the revised Probate Code or designated on or after April 1, 2000 under the Estates and Protected Individuals Code; then the spouse; followed by an adult son or daughter; then either parent; and continuing with an adult brother or sister; guardian of the decedent; or, one authorized to dispose of the body. A decision to donate the organs of the decedent made under this provision could not be revoked by a person who had a lower priority. The bill is tie-barred to House Bill 4384.

House Bill 4384 would amend the Estates and Protected Individuals Code (MCL 700.1106 et al.), which took effect on April 1, 2000, to specify that a patient advocate or other person could be authorized to donate the organs of an individual making the authorization. (The Estates and Protected Individuals Code, created by Public Act 386 of 1998, repeals and replaces the Revised Probate Code.) As written, the act allows any person over 18 years of age to authorize another individual over the age of 18, in writing, to exercise powers concerning his or her care, custody, and medical treatment decisions. The bill would specify that a person could also include authorization for the individual to make an anatomical gift of all or

part of his or her body. A statement would have to be included specifying that the authority to donate another's body would only be exercisable when the patient was dead or when death was imminent and inevitable. Patient advocates could also be designated to authorize the donation of a patient's body, and would be held to the same restriction as to when the authority to make such a decision could be exercised. Currently, a patient advocate designation is revoked upon a patient's death. However, the bill would specify that a patient's death would not nullify the part of the designation authorizing a patient advocate to make an anatomical gift of the patient's body. The bill is tie-barred to House Bill 4383.

BACKGROUND INFORMATION:

Previous committee action. House Bill 4383 (Substitute H-1) and House Bill 4384 as introduced were previously reported by the House Health Policy Committee. The bills were referred back to committee. The committee adopted a substitute for House Bill 4384 that conforms to changes in Section 1106 of the Estates and Protected Individuals Code brought about by the enactment of Public Act 54 of 2000 (Senate Bill 1045).

National organ procurement and transplantation network. The National Organ Transplant Act, enacted in 1984, called for the establishment of a national organ procurement and transplantation network (OPTN). Membership in the OPTN includes hospitals with transplant programs and organ procurement organizations (OPOs). The OPTN maintains a national computerized list of patients waiting for organ transplantation and a 24-hour-a-day computerized organ placement center which matches donors and recipients. Under the oversight of the U.S. Department of Health and Human Services (HHS), the OPTN has established voluntary policies for member organizations in regard to procurement of organs, organ allocation, and donor-recipient matches. Since 1986, HHS has contracted with the United Network for Organ Sharing (UNOS) to administer the OPTN. A nonprofit, independent corporation, UNOS' function includes the compilation of statistics used to ascertain and to coordinate both the availability and the location of donors and those who await transplant of organs and tissues.

Because of the voluntary nature of the OPTN policies, individual states and the 62 organ procurement organizations, which act as organ recovery and distribution agencies, have had some flexibility in deciding how to allocate organs that were procured, or donated, in their regions. In addition, there are different allocation policies for each type of organ. When organs become available, it is typical to look for recipients first in the local service area. The service areas are federally designated and each area may be a multi-state area or be an area that covers part or all of an individual state. In the case of liver donations, Michigan is part of a reciprocal agreement with Indiana and Ohio. In Michigan, with eight organ transplantation centers, an organ from a Michigan donor is usually given to a Michigan transplant patient.

In 1994, the U.S. Department of Health & Human Services published proposed rules to codify the operation of the Organ Procurement Transplantation Network, with the final rule being published on April 2, 1998. In October of 1998, Congress placed a moratorium on the rules for one year and ordered an independent study to be done by the Institute of Medicine. Though scheduled to go into effect on October 21, 1999, the rules were once again put on hold while several provisions of the rules, particularly the issue of organ allocation, were discussed further. Revisions have recently been adopted to the rules to address many of the concerns, including provisions to: emphasize and strengthen the role of the transplant community in policy development; establish an Independent Advisory Committee to ensure policies are grounded on the best available medical science; deem a broader sharing of organs to be acceptable and not require a "single national list"; and prohibit policies that would waste organs or allow transplants that are futile. The OPTN final rule is scheduled to take effect March 16, 2000.

Before the latest revision of the OPTN final rule was made public, some believed that the federal rule opened the possibility for the creation of a national list that would require organs to go the sickest people on the list regardless of the geographical distance involved. To address that concern, legislation was introduced in the form of House Bill 4851, which has been passed by the House and is waiting Senate action. For more information, see the House Legislative Analysis Section's analysis of House Bill 4851 dated 10-5-99.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, neither of the bills is expected to have a significant impact on state government. (2-7-00)

ARGUMENTS:

For:

Though great strides have been made in increasing the number of people willing to donate organs and tissue, there are still shortages of available organs. Reportedly, about 300 people die each year in Michigan while waiting for a transplant. The bills should help the situation by addressing a few problem areas. For example, if a person has indicated that he or she wishes to be a donor, a family member could not revoke the designation after the person's death. Further, many people designate a person as a patient advocate to help make medical decisions when they are no longer competent to do so. Currently, a patient advocate's authority expires upon the death of the patient. Since the decision to donate an organ or tissue may not be able to be made until after the patient's death, it is important to extend the advocate's authority past the point of death, but only for the purpose of organ donation. The bills should be supported as they would serve to clarify and strengthen existing legislation.

POSITIONS:

The Gift of Life Transplant Society supports the bills. (2-8-00)

The Office of the Secretary of State supports House Bill 4383. (2-7-00)

The Department of Community Health supports the bills. (4-19-00)

Analyst: S. Stutzky

■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.