

SUBJECT: Changing disciplinary action regarding the filing of death certificates

COMMITTEE: Public Health — committee substitute recommended

VOTE: 7 ayes — Delisi, Jackson, Cohen, Coleman, Gonzales, S. King, Truitt
0 nays
2 absent — Laubenberg, Olivo

WITNESSES: For — (*Registered, but did not testify:* Karen Grice and Charles Villasenor, Texas Funeral Directors Association; Dinah S. Welsh, Texas Hospital Association; Lynda Woolbert, Coalition for Nurses in Advanced Practice)
Against — None
On — Geraldine Harris, DSHS; Chet Robbins, Texas Funeral Service Commission

BACKGROUND: Health and Safety Code, sec. 193.002 sets requirements for reporting death certificates for funeral service providers and others in charge of interment or removal of a body for disposition. Under sec. 193.003, a person is required to file a death certificate within 10 days of when the death occurred or the body was found.

A person required to file a death certificate must obtain certain information in connection with the death from a knowledgeable source, including a medical certification from an attending physician if the death occurred in the course of providing care or treatment for a condition that contributed to the death. Under sec. sec. 193.005, the attending physician must complete the medical certification within five days of receiving the death certificate.

A funeral service provider who does not file the death certificate within the 10-day deadline may face penalties from Texas Funeral Service Commission. Under Texas Administrative Code, Title 22, part 10, ch. 201, rule 201.11(I)(vii), a violation of Health and Safety Code, ch. 193 can result in a fine ranging from \$250 to \$5,000.

DIGEST: CSHB 755 would add Health and Safety Code, sec. 193.0041 to prohibit a state agency from taking disciplinary action against a person it licensed for failure to timely file a death certificate if the licensee provided written documentation that the licensee made a good faith effort to file the certificate timely and failed to meet the deadline due to circumstances beyond the person's control.

The bill would take effect September 1, 2007.

SUPPORTERS SAY: CSHB 755 would prevent the Texas Funeral Service Commission from fining a funeral director who could demonstrate good reason for failure to meet a tight statutory deadline. Before they can file death certificates, funeral service providers often must obtain signatures from physicians with knowledge of a disease or illness that contributed to the person's death. Despite their best efforts, funeral directors or their staff frequently have difficulty contacting the physician, or an associate, who has knowledge of the case. In addition, these physicians often do not return the signed death certificate to the funeral service provider within the required five days. Even if the commission occasionally excuses funeral service providers under such circumstances, the bill remains necessary to assure that people responsible for the timely filing of death certificates were not punished through no fault of their own.

While the timely filing of death certificates is important, other methods would be much more effective in achieving this objective than penalizing funeral service providers. For example, a bill that passed the House earlier this session — HB 1739 by Hartnett — would require the parties responsible for completing and filing death certificates to use a state-administered electronic reporting system. This represents a proactive solution that would improve the efficiency and timeliness of reporting much more than continuing to fine funeral directors doing their best to comply with the law.

OPPONENTS SAY: The bill is unnecessary because the Texas Funeral Service Commission already has the discretion to consider mitigating circumstances and often excuses funeral service providers who can show good cause for late filings. Sec. 193.005 requires the physician to notify the funeral director if the medical certification cannot be completed within five days, and the commission usually excuses a missed deadline if the director provides written documentation of circumstances behind the delay.

Death certificates that are not filed timely can lead to delays in estate settlements, collection of insurance claims, and other postmortem legal proceedings. By making it easier for funeral directors to exceed the 10-day filing deadline, this bill could serve to further slow the process for filing death certificates.

NOTES:

A related bill, HB 1739 by Hartnett, which would require the electronic submission of death certificate information, passed the House by 141-0 on April 19 and is scheduled for a hearing in the Senate Health and Human Services Committee on May 3.