
Wisconsin Legislative Council

MINUTES



STUDY COMMITTEE ON UNIFORM DEATH REPORTING STANDARDS

330 Southwest, State Capitol
Madison, WI
December 15, 2022
12:00 p.m. – 1:30 p.m.

CALL TO ORDER AND ROLL CALL

Chair Ballweg called the meeting to order and determined that a quorum was present.

COMMITTEE MEMBERS PRESENT: Sen. Joan Ballweg, Chair; Rep. Jesse James, Vice Chair; Sen. LaTonya Johnson; Rep. Steve Doyle; and Public Members Sara Kohlbeck, Brian Michel, Teresa Paulus, Kerry Riemer, and Tara Steininger.

COMMITTEE MEMBERS EXCUSED: Public Members Lynda Biedrzycki and Tim Candahl.

COUNCIL STAFF PRESENT: Amber Otis, Senior Staff Attorney; and Kelly McGraw, Staff Attorney.

ATTENTION: This was the final meeting of the Study Committee on Uniform Death Reporting Standards. Committee members are requested to send any corrections regarding minutes to the Legislative Council staff. After the incorporation of any corrections, these minutes will be considered approved by the committee.

APPROVAL OF THE MINUTES OF THE NOVEMBER 15, 2022 MEETING

Senator Johnson moved, seconded by Ms. Paulus, to approve the minutes of the study committee's meeting on November 15, 2022. The motion passed by unanimous consent.

DISCUSSION OF REVISED BILL DRAFTS

Chair Ballweg welcomed members to the committee's last meeting and reminded them that the meeting's focus would be to review two bill drafts that were revised pursuant to the committee's requests at the previous meeting. Chair Ballweg explained that the committee will discuss each bill draft individually, starting first with Legislative Council staff describing each revised bill draft and summarizing any written feedback received by the committee.

LRB-0524/P4, Relating to Requiring DHS to Promulgate Rules Regarding Death Investigations and Medical Certification of Deaths

Kelly McGraw, Legislative Council staff, described LRB-0524/P4, as revised to reflect the following changes requested by the committee to: (1) clarify that the best practices are for medical certifications completed only by coroners and medical examiners; (2) require Department of Health Services (DHS) to consult with forensic pathologist organizations and further permit DHS to consult with other stakeholders; (3) require DHS to periodically update the best practices; and (4) remove the requirement that the best practices be in a checklist format.

At Chair Ballweg's request, Ms. McGraw described written comments submitted by DHS, including requests to: (1) modify or remove the bill draft's reference to ch. 979, Stats., to the extent it may be interpreted to require DHS to establish best practices for all aspects of death investigations under ch. 979, Stats.; and (2) clarify whether the committee intends for the best practices to be published and promoted, but not enforced by, DHS or, alternatively, whether the committee intends for the best practices to be promulgated as administrative rules, which may be legally enforceable and could require consent from the Attorney General if incorporating by reference any standards from nationally recognized organizations.

Committee members generally discussed their intent to have best practices available as guidelines, and not be enforced as administrative rules with the effect of law, and further noted that any such requirements may be enforced differently with respect to medical examiners versus coroners, given a coroner's status as an official elected under the Wisconsin Constitution.

Representative Doyle moved, seconded by Senator Johnson, to remove the requirement that the best practices be promulgated as administrative rules, and instead require DHS to establish and encourage such best practices for coroners and medical examiners. The motion was approved on a vote of Ayes, 9 (Sens. Ballweg and Johnson; Reps. James and Doyle; and Public Members Kohlbeck, Michel, Paulus, Riemer, and Steininger; Noes, 0; and Absent, 2 (Public Members Biedrzycki and Candahl).

Next, committee members discussed DHS's concern regarding the bill draft's reference to ch. 979, Stats., which governs various aspects of death investigations, such as inquests, which involve other professionals and procedures beyond the role of a medical examiner or coroner. At Chair Ballweg's request, Ms. McGraw explained that, if the committee intends to specifically address best practices relating to medical certifications completed by coroners and medical examiners, the draft could be modified to reference only s. 979.01, Stats., which lists the types of deaths under the investigatory jurisdiction of a coroner or medical examiner, rather than referencing the entire statutory chapter. Chair Ballweg noted that this would be a technical change to clarify the bill draft's scope.

Senator Johnson moved, seconded by Ms. Paulus, to modify the bill draft to clarify that the best practices are for coroners and medical examiners when completing medical certifications under s. 69.18 (2), Stats., and investigating deaths under s. 979.01, Stats. The motion was approved on a vote of Ayes, 9 (Sens. Ballweg and Johnson; Reps. James and Doyle; and Public Members Kohlbeck, Michel, Paulus, Riemer, and Steininger; Noes, 0; and Absent, 2 (Public Members Biedrzycki and Candahl).

In response to other comments from DHS, Chair Ballweg noted that, to the extent resources may be necessary for the bill draft's implementation, DHS may submit a fiscal estimate as part of the regular legislative process.

Representative James moved, seconded by Representative Doyle, to recommend introduction of LRB-0524/P4, as modified, by the Joint Legislative Council. The motion was approved on a vote of Ayes, 9 (Sens. Ballweg and Johnson; Reps. James and Doyle; and Public Members Kohlbeck, Michel, Paulus, Riemer, and Steininger; Noes, 0; and Absent, 2 (Public Members Biedrzycki and Candahl).

LRB-0521/P4, Relating to Fatality Review Teams and Granting Rule-Making Authority

Amber Otis, Legislative Council staff, described the revisions to LRB-0521/P4 based on the committee's instructions at the previous meeting, such as: (1) removing the provisions addressing specific types of fatality review teams; (2) clarifying that a team's access to certain records is permissive, not mandatory; (3) replacing the defined term "unexpected death" with the term "reviewable death"; (4) maintaining certain duties and authority for DHS relating to the fatality review program and requiring DHS to coordinate with other state agencies, as appropriate, when fulfilling such duties; and (5) requiring DHS to promulgate rules creating a standardized form for use by suicide death review teams and further allowing DHS to develop, by rule, standardized forms for use by teams reviewing other types of reviewable deaths.

After the description of the updated bill draft, Chair Ballweg requested committee members' general feedback. First, committee members discussed the scope of DHS's duties under the bill draft, with some members expressing support for expanding DHS's functions beyond its current role for child death review, such as requiring DHS to create databases for all types of deaths being reviewed. Other members expressed concern that any significant expansions of DHS's role would be inconsistent with the committee's intent to codify current practice. Ultimately, after discussing the bill draft's provisions that create a fatality review team program, specify DHS's duties, and require teams to enter data into any database designated by DHS, the committee reached consensus to maintain the bill draft's language regarding DHS's role.

The committee also discussed the bill draft's definition of "reviewable death" and its nonexhaustive nature, which allows a team to review any type of death, even if not expressly listed. Ultimately, the committee confirmed that it intended that level of flexibility, in part noting that the definition of "fatality review team" reflected a public health purpose, because a team is defined as a group that not only examines one or more types of reviewable deaths but also develops recommendations to prevent future deaths of similar circumstances.

Next, at Chair Ballweg's request, Ms. Otis described the feedback submitted jointly by the Medical College of Wisconsin and the Children's Health Alliance of Wisconsin, which requested the following two changes: (1) allow, rather than require, DHS to establish a fatality review team program, and specify that teams must follow DHS guidance if DHS does indeed develop a program for the team's specific type of reviewable deaths; and (2) specify in statute that a team's access to certain treatment and educational records is allowed "as permitted under federal law." The committee considered these suggestions but ultimately did not modify the bill draft, after acknowledging both its previous robust discussion concerning the scope of DHS's role and the understanding that federal law would preempt any conflicting state laws governing record access, even if not expressly stated in statute.

Representative Doyle moved, seconded by Senator Johnson, to recommend introduction of LRB-0521/P4 by the Joint Legislative Council. The motion was approved on a vote of Ayes, 9 (Sens. Ballweg and Johnson; Reps. James and Doyle; and Public Members Kohlbeck, Michel, Paulus, Riemer, and Steininger; Noes, 0; and Absent, 2 (Public Members Biedrzycki and Candahl).

DISCUSSION OF COMMITTEE ASSIGNMENT

Chair Ballweg invited members to identify any other questions or comments relating to any of the committee's recommended bill drafts or other topics within the committee's scope. Mr. Michel noted that, while the committee did not pursue legislation in this area, he maintains support for future legislation addressing access to data relating to a decedent's veteran status and information sharing among governmental agencies.

ADJOURNMENT

Chair Ballweg closed with a reminder that the Joint Legislative Council will meet in early 2023 to vote on introduction of the committee's recommended bill drafts in the next legislative session. She explained that, if introduced, the bills may receive public hearings, at which members may testify. To that end, she noted that members will be informed of any legislative activity throughout the process. She thanked members for their service and noted the value of public members' perspectives and expertise when drafting legislation. The meeting adjourned at 1:30 p.m.

AO:ksm