

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 934

(Delegate Bartlett)

Health and Government Operations

Finance

Public Health – Chief Medical Examiner – Autopsy Findings and Conclusions

This bill explicitly authorizes a person in interest to appeal a denial by the Chief Medical Examiner to correct findings and conclusions on the *manner* of death to the Secretary of Health, who must refer the matter to the Office of Administrative Hearings (OAH) for a contested hearing on both the denial and on the establishment of the findings and conclusions on the cause and *manner* of death. By October 1, 2024, the Maryland Department of Health (MDH) must report to the Senate Finance and the House Health and Government Operations committees on the number of appeals made to the Secretary when the Chief Medical Examiner denied the request of a person in interest to correct findings and conclusions on the cause and manner of death after October 1, 2021.

Fiscal Summary

State Effect: State finances are not materially affected as the bill generally clarifies current law, as discussed below. MDH can likely report to specified committees of the General Assembly with existing budgeted resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: An individual who performs an autopsy must prepare detailed written findings during the autopsy. The original copy of such findings and the conclusions drawn from them must be filed in the Office of the Chief Medical Examiner and a copy must be filed in the office of the medical examiner for the county where the death occurred.

With the exception of cases where the finding is homicide, a person of interest (defined as the spouse, adult child, parent, adult sibling, grandparent, or guardian of the person of the deceased at the time of the deceased's death) may request that the medical examiner correct findings and conclusions on the *cause and manner* of death recorded on a certificate of death within 60 days after the medical examiner files the findings and conclusions.

If the Chief Medical Examiner denies the request of a person in interest to correct the findings and conclusions on the *cause* of death, the person in interest may appeal the denial to correct the *cause* of death to the Secretary, who must then refer the matter to OAH. A contested hearing before OAH must be a hearing on both (1) the denial of the request and (2) the establishment of the findings and conclusions on the cause of death.

Following a hearing, an administrative law judge (ALJ) must submit findings of fact to the Secretary. After a review of the ALJ's findings, the Secretary, including a designee, must issue an order to either (1) adopt the findings of the ALJ or (2) reject the findings of the ALJ and affirm the findings of the medical examiner. If the ALJ's findings are rejected, the person in interest may further appeal to a circuit court in an appropriate jurisdiction.

If a final decision (by either the Secretary, including a designee, or the appropriate circuit court) establishes a different finding or conclusion on the *cause or manner* of death of a deceased than that recorded on the certificate of death, the medical examiner must amend the certificate to reflect the different finding or conclusion.

If the findings of the medical examiner are upheld by the Secretary, the person in interest who appealed is responsible for the costs of the contested case hearing. Otherwise, MDH is responsible for the costs.

State Fiscal Effect: OAH advises that the bill's changes are clarifying as OAH already handles appeals for both the *cause and manner* of death under current law. OAH further advises that appeals of this type have historically been very low. In fiscal 2019 and 2020, there were no such appeals; in fiscal 2021 (through February 2021), there has been one such appeal.

However, MDH indicates that explicitly authorizing appeals related to a denial of the medical examiner to change the *manner* of death (natural, accidental, suicide, homicide, or undetermined) may result in an expenditure increase for MDH related to re-investigations, potential exhumations, complete autopsies (both gross anatomy and toxicology), and hearing costs, all of which could total approximately \$19,300 per such case. MDH further advises that suicide is the manner of death most often contested by persons of interest and is more often requested to be reclassified as a homicide. To the extent the bill spurs more appeals, general fund expenditures may increase as described above.

Nevertheless, State finances are assumed to not be materially affected based on the appeals data from OAH.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland Department of Health; Office of Administrative Hearings; Department of Legislative Services

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