

**May 21, 2015 - Cemetery Association of Oregon – HB 3243**

Chair            Senator Sara Gelser  
Vice-Chair     Senator Alan Olsen  
Member        Senator Michael Dembrow  
Member        Senator Laurie Monnes Anderson  
Member        Senator Jeff Kruse

Committee Administrator     Cheyenne Ross  
503-986-1490  
Committee Assistant     Maria Hernandez  
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Dear Sen. Gelser:

The Cemetery Association of Oregon (CAO) believes that the Indigent Disposition Fund resides with the appropriate State institution and does not need to be moved to another department in the State at the cost of Oregon’s citizens. The CAO believes that some focus on the process to determine an indigent needs to be made in order to improve the management of the funds. The CAO also believes that there are substantial issues with other elements of the Statute and HB 3243 that need further research and recommendation to the Legislature before a change can be made to the current Statute.

**Problem:**

The Indigent Disposition Fund as described in Statute needs clarification. HB 3243 only addresses certain issues and transfers an existing functioning funded program from the Office of Public Health to the Oregon Mortuary and Cemetery Board which will create additional issues with the fund.

This bill does not address the full scope of issues with the handling of deceased indigents- issues range from dignified preparation of deceased indigents; deceased indigents who are Veterans; the Veterans Administration; the final disposition of indigent human remains whether in form of cremation or burial; burdens private industry to classify a decedent as indigent; imposes that the fund be supplied by the Death Certificate filing fee – which lays the burden on a small percentage of Oregon’s population, those citizens who are currently dealing with a death are paying for the fund; the determination of indigent; rights to apply to the fund and anatomical donation.

**The current process:**

The indigent disposition program is managed by the Office of the State Public Health Director and is funded by \$6 from the Death Certificate filing fee. The Office of Public Health provides public health policy and direction to the public health programs within the Division, and ensures that the disparate programs within and outside the Division create an effective and coherent public health system for the state. This includes extensive interactions with a range of state and local agencies and organizations, many of them outside the health care community. Within this office is Vital Statistics which tracks the data of the State, including deaths.

The Office of Public Health already has a program in place that provides for the reimbursement to funeral business provider and tracks the usage of the fund. In brief, the funeral home receives the deceased “indigent” and is burdened with the responsibility to determine if the deceased is indigent or not by attempting to locate the next of kin or responsible party, if no one can be found then the funeral business provider generally cremates the decedent and makes a claim to the fund, this claim is processed by the Office of Public Health in Portland and the check is cut by the State Financial Services office in Salem. Right now reimbursements are based on the occurrence of indigent cases determined by and reported by funeral establishments.

**Cemetery Association of Oregon Concerns (in bold):**

- 1. The classification of a deceased indigent person is confusing and not specific. Amendment, Page 1, lines 13-15 has the following language “..refuses to pay for the disposition of the deceased person’s body;” this language would allow for the responsible party’s refusal to pay for final disposition and because of this classifies the deceased as indigent and provides for private business to be eligible for the financial support of the State Indigent Disposition Fund.**

This language is not specific enough and does not address situations where the responsible party may be able to obtain funds within their own network of family, friends and organizations. Giving responsible parties for disposition the opportunity to refuse financial responsibility and essentially abandon their loved one at the receiving funeral home without consequence which burdens the business community to either take a revenue loss or to seek funds from the State. By wording this provision in this manner makes it acceptable to refuse financial responsibility forcing funeral providers to apply to the indigent fund on a more frequent basis.

Service providers such as hospice agencies, hospitals and elder care facilities who already inform families of the Indigent Disposition Fund may inadvertently increase the usage of the fund because of the addition the loose language “refuses to pay.” This would increase the referral rate to the fund by service providers. It is estimated that there are approximately 400 filings, each year, for Indigent Disposition Funds in the State of Oregon. It can be hypothesized, that should the language remain vague with regards to “refusing to pay” that the annual filings for Indigent Disposition Funds could potentially double or triple in a very short period of time.

**CAO OPINION:** We propose that lines 13-15 either be removed from the bill or clarified in a specific manner that leaves no opportunity for the responsible part to simply decline financial responsibility because they don’t want to pay for services. The current wording, should it remain, allows for interpretation that can be detrimental to funeral providers and the Indigent Disposition Fund’s ability to pay claims with an appropriate amount or reimbursement.

- 2. Page 2, line 30 and Page 3, line 1, Contacting the Department of Veteran Affairs to see if the deceased is eligible for any State or Federal Benefits. This provision is flawed and needs more investigation and procedure.**

At this time, the only VA Benefits a funeral provider can use to care for the needs of an indigent Veteran is their entitlement for placement in a National Cemetery. Following the introduction of new policies by the Department of Veteran Affairs in 2014, the Department of Veteran Affairs **no longer** reimburses funeral providers entitlements for funeral expenses. Payments of burial allowances are paid directly to the next of kin upon receipt of the VA Burial Benefits Application.

In the event the Veteran is indigent or unclaimed and is not under the care of the VA Medical Center, a funeral home would need to complete the VA Burial Benefits application and provide a written statement, the statement must certify that:

- The State, or political subdivision of the State, authorized the deceased veteran’s funeral service
- There is no next of kin or person claiming the deceased veterans’ remains
- There are insufficient resources in the veteran’s estate to cover burial and funeral expenses, and

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- A responsible, appointed official of the State must sign the statement

At this time, the regulations regarding VA reimbursement are so new, that no such designated Oregon State Official has been appointed which has resulted in unprocessed, eligible claims that would meet the criteria of payment from the Indigent Disposition Fund, should VA funds not be a possibility.

In the event the Veteran dies in a VA Facility or Hospital, the hospital administrator authorizes disposition by signing the required statement. In these cases, the Department of Veteran Affairs will not provide reimbursement to funeral providers as the new VA policies and procedures state that when the veteran dies in a VA facility, the Veterans Health Administration (VHA) is responsible for providing the reimbursement to the funeral provider for the indigent veteran.

These new VA regulations are very different than past practices and the VA is in the process of identifying procedures for the Burial Claims Fund and reimbursements.

Currently indigent, unclaimed Veterans, regardless of their VA Claim Status, are eligible and entitled to VA reimbursement for funeral services. These available funds would make them ineligible for reimbursement from the State Indigent Disposition Fund. Simply put all indigents that are honorably discharged Veterans and eligible for burial in a National Cemetery would no longer be eligible for the Indigent Disposition Fund. a concern would be if a funeral provider is willing and able to provide dignified services to an indigent who is an honorably discharged Veteran , eligible for burial in a National Cemetery if there is no timely reimbursement? It is common for VA claims to take 6-8 months before they pay out. With the lack of knowledge and understanding of how the new VA policies with regards payment for indigent/unclaimed Veterans, claims may take substantially longer forcing funeral providers to provide service without any form of timely payment.

**CAO Opinion:** The CAO believes that this provision either be removed from the bill or that the bill be introduced at a future session after further information is collected and the State and VA coordinate the burial benefits application statement criteria listed above.

- 3. Page 5, lines 1-3. Authorization of an autopsy when the procedure has been denied by the State/County Medical Examiner or Superintendent of the medical facility. The Oregon Mortuary and Cemetery Board does not have the expertise to authorize an autopsy however, a Demonstrator of Anatomy, who is usually a director of a body donation program, would have the appropriate expertise and knowledge to give such authorization.**

Currently the Indigent Disposition Fund is not designed to cover expenses related to autopsy's and transportation to autopsy facilities. Who would be financially responsible for an autopsy should it be authorized by the Oregon Mortuary Cemetery Board? To hire a pathologist to perform a private autopsy (an autopsy that is not performed by a Medical Examiner or hospital pathologist) can cost up to \$1,000 depending of the extent of the examination.

**Solution:** Remove the language that transfers this authority to the OMCB. Qualified parties that authorize autopsies should have some background in pathology or anatomy and physiology in order to make an appropriate decision to allow an autopsy. To our knowledge, the Oregon Mortuary Cemetery Board does not employ the expertise or knowledge to maintain the authority to authorize such a procedure. The financial responsibility for autopsy services needs to be assumed by someone other than the funeral provider as the

payment they receive from the Indigent Disposition Fund is not substantial enough to offset the disposition expense and the expense of a private autopsy.

4. **Page 5, lines 1-3, “ *the funeral establishment may transfer the body to an on the list of institutions described in subsection (2) of this section that desires the body for education or research purposes.*” Currently teaching hospitals refuse indigent cases due to liability issues.**

Teaching hospitals (such as OHSU) identified by the Oregon Mortuary Cemetery Board as having body donation programs DO NOT accept indigents for body donation and they refuse them. The only facility that would accept an indigent is the Mt. Hood Community College Mortuary Science Program and the body would be used for the purpose of embalming education. This program is only operation 8 months out of the year and they are limited by their class schedule as to how many bodies can be accepted for educational purposes.

Both instances also create a liability for these institutions, because without obtaining proper approvals and waivers from the next of kin of the deceased there could be the potential for the next of kin to surface only to discover their loved one’s body was donated for the purpose of education without their approval.

**CAO OPINION:** With institutions not willing to accept indigents for body donation due to the liability, this text should not be included in the bill or it should be amended to list specifically the Mortuary Science Program at Mt. Hood Community College.

5. **HB 3243 Page 3, SECTION 5. (1) The amendments to ORS 97.170, 97.180, 97.200 and 413.825 by sections 1 to 4 of this 2015 Act become operative on January 1, 2016. (2) The State Mortuary and Cemetery Board may take action before the operative date specified in subsection (1) of this section that is necessary to enable the board to exercise, on or after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the board by the amendments to ORS 97.170, 97.180, 97.200 and 413.825 by sections 1 to 4 of this 2015 Act. And, Amendment Page 6, lines 22- 30, Page 7, lines 1-9, “The [Oregon Health Authority] State Mortuary and Cemetery Board shall impose and collect a filing fee...” As stated on Page 1 of this document, there is already a program in place and fees established.**

The Office of Public Health already has a program in place that provides for the reimbursement to funeral establishments and tracks the usage of the fund. Currently the Fund is sustained by \$6 of the Death Certificate filing fee.

There is not clear statement as to why the Indigent Disposition Fund should be moved from one State agency to another. The Office of Public Health currently manages the fund, tracks the vital statistics of indigent cases, deals with classification of poverty, homelessness etc., receives data from State, County and Local governments. Instead of moving an entire program HB 3243 should improve the current program, such as:

**CAO OPINION:** The Office of Public Health along with other State, County and Local Governments are much better equipped to determine which decedents are indigent or not. By moving this burden from private industry (funeral establishments) to a public body, the State can better control and track the fund. Right now reimbursements are based on the occurrence of indigent cases determined by and reported by funeral establishments.

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Currently each county public health officer is involved in indigent cases, an additional step would be made by them to contact the Division of State Lands and to document that the decedent is an indigent then the County would provide their documentation to the funeral establishment, State Public Health Office and Vital Statistics. Thus creating less burden on the funeral establishment and provide for local and state agencies making the indigent determination and a clear sightline to reimbursement.

As stated above the Indigent Disposition Fund is already operational, after the determination by State and local jurisdictions the funeral establishment may send in a claim for reimbursement as they have been doing.

Sincerely,

A handwritten signature in black ink, appearing to read "Rachel Fox", is centered below the text "Sincerely,".

Rachel Fox  
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