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Bill Analysis
Legislative Service Commission

H.B. 398

125th General Assembly
(As Introduced)

Reps. J. Stewart, Allen, Aslanides, Core, Hollister, McGregor, Redfern, Seitz, Setzer, Taylor, Willamowski, Olman

BILL SUMMARY

- Requires the Department of Mental Health, in coordination with other local and state agencies and historical and genealogical societies, to create the most complete compilation possible of patients who died while residing at public hospitals.
- Defines "cemetery restoration organization" and requires the Department of Mental Health to assist and cooperate with these organizations in their work to restore patient cemeteries and gravesites located on the grounds of public hospitals or on property designated by the State for the burial, entombment, or inurnment of patients.
- Subject to certain exceptions, requires state agencies to make available to cemetery restoration organizations for purposes of inspection and copying copies of death and burial records of patients who died while residing at a public hospital.
- Establishes a procedure state agencies must follow on receiving a request under the bill from a cemetery restoration organization to inspect or copy a record of death or burial.

CONTENT AND OPERATION

Compilation of cemeteries and gravesites

(R.C. 5122.45(A))

The bill requires the Ohio Department of Mental Health, in coordination with county and other local historical and genealogical societies, the Ohio

Historical Society, State Library, Secretary of State, and other relevant state and local agencies and organizations identified by the Department, to do the following:

- Determine all available records of death and burial¹ necessary to create the most complete compilation possible of patients who died while residing at public hospitals² and create that compilation.
- Prepare the most complete compilation possible of the cemeteries and gravesites of patients located on the grounds of public hospitals or on property that is not owned by the state but has been designated by the state for the burial, entombment,³ or inurnment⁴ of patients.
- Assist and cooperate with cemetery restoration organizations.

Cemetery restoration organizations

(R.C. 5122.44, R.C. 5122.45(B), and R.C. 5122.01(not in the bill))

The bill defines "cemetery restoration organization," as any group or entity the Director of Mental Health recognizes as satisfying the criteria for recognition as a group or entity that restores the cemeteries and gravesites of patients⁵ located on the grounds of public hospitals or on property that is not owned by the state but has been designated by the state for the burial, entombment, or inurnment of patients. The Director must adopt administrative rules establishing the criteria and a procedure for recognizing such groups or entities for the purposes of the bill. The rules must be adopted in accordance with R.C. 111.15, which does not require public hearings.

¹ The bill defines "record of death and burial" as information in a record to the extent it specifies the name of a patient and either the date of death of the patient or the location of the burial, entombment, or inurnment of the patient.

² A "public hospital" is a facility that is tax-supported and under the jurisdiction of the Department of Mental Health. (R.C. 5122.01(G), not in the bill.)

³ "Entombment" is neither defined in the bill nor in the Revised Code. However, the dictionary defines it as the placement of a thing in a tomb. *THE RANDOM HOUSE COLLEGE DICTIONARY* 441 (Rev. ed. 1988).

⁴ "Inurnment" is neither defined in the bill nor in the Revised Code. However, the dictionary defines it as the placement of a thing in a funeral urn (a vase for holding the ashes of a cremated body). *THE RANDOM HOUSE COLLEGE DICTIONARY* 701, 1447 (Rev. ed. 1988).

⁵ The bill defines "patient" as an individual who died while residing at a public hospital.

Availability of death and burial records

(R.C. 5122.46(A))

The bill requires records of death and burial in the possession of a state agency to be made available to cemetery restoration organizations for inspection and copying at all reasonable times during regular business hours for the purpose of facilitating their restoration of the cemeteries and gravesites of patients who died while residing at public hospitals. This requirement applies notwithstanding the public records law⁶ and the information disclosure law pertaining to persons with mental illness.⁷ The bill establishes a procedure that cemetery restoration organizations must use to request these records (see "**Procedure to obtain records of death and burial**," below).

Exception to availability of records of death and burial

(R.C. 5122.46(B)(2))

The death and burial records availability requirement does not apply if a family member of a patient who is the subject of a records request notifies the appropriate state agency of the family member's desire to have that patient's record withheld from the inspection of, and copying by, a cemetery restoration organization. The bill establishes a procedure family members must use to notify state agencies of such desires (see step (2) under "**Procedure to obtain death and burial records**," below).

Procedure to obtain death and burial records

(R.C. 5122.46(B))

The bill establishes the following procedure, which state agencies must use on receiving a request from a cemetery restoration organization to inspect or copy a record of death or burial:

(1) On receiving the cemetery restoration organization's request, the state agency that possesses the record must publish a notice once a week for two consecutive weeks in a newspaper of general circulation in the county in which the principal office of the agency is located and in a newspaper of general circulation in the county in which the public hospital is located to which the record of death and burial relates. The notice may not disclose the name of the patient who is the

⁶ R.C. 149.43.

⁷ R.C. 5122.31.

subject of the record, but must describe the patient as an individual who died on a specified date while residing in a specified public hospital to which the record of death and burial relates. In addition, the notice must include the following information:

- The name of and a mailing address for notification of the state agency.
- A statement that, under H.B. 398 of the 125th General Assembly, records of death and burial in the possession of the state agency generally must be made available, upon the request of a cemetery restoration organization, for inspection and copying for the purpose of facilitating the restoration of cemeteries and gravesites of patients; that such request has been made; and that, within two weeks after the second publication of the notice, a family member of the patient who is the subject of the record of death and burial involved may notify the agency of the family member's desire to have that patient's record withheld from the requested and any future requested inspection and copying by a cemetery restoration organization.
- Information on how a family member of the patient involved who desires to have that patient's record of death and burial withheld from the requested and any future requested inspection and copying by a cemetery restoration organization may notify the agency within the two-week period.

(2) Within two weeks after the second publication of the notice described in (1), above, a family member of a patient who is the subject of the record of death or burial may request in writing that the state agency withhold that patient's record from the requested and any future requested inspection and copying by a cemetery restoration organization. If a family member of the patient so notifies the agency, the patient's record may not be made available for inspection or copying by the requesting cemetery restoration organization or any other cemetery restoration organization.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-05-04	p. 1639

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