

The Role of a Director of Social Services in the Disposition of Unclaimed Bodies

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As the United States has faced a new surge of COVID-19 cases, hospitals in [North Carolina](#) and [other states](#) are having to use mobile morgues to store bodies when on-site morgues reach capacity. Unfortunately, this means that it's an appropriate time to discuss one of the lesser-known duties of the director of a county department of social services ("DSS") in North Carolina: arranging for final disposition of unclaimed bodies. Pursuant to North Carolina General Statute (hereinafter, G.S.) [130A-415](#), a county DSS director has ultimate responsibility for the burial or cremation of an unclaimed, deceased body that has been declined by the Commission of Anatomy. Below are a few questions and answers describing the applicable law and highlighting some of the gray areas in the process.

How does the responsibility of the DSS director described in this blog post apply to consolidated human services agencies?

Some counties in North Carolina have merged the county DSS into a consolidated human services agency ("CHSA"). If the CHSA includes the county DSS, the CHSA director assumes most of the powers and duties granted to a DSS director, including responsibility for final disposition of unclaimed bodies. See [G.S. 153A-77\(e\)](#). The CHSA director may exercise that responsibility directly or to delegate it to others within the agency.

When an individual dies, what responsibility does the person in possession of the body have regarding the body?

The general rule, set forth in [G.S. 130A-415\(a\)](#), is that any person (other than a person licensed as a funeral director or funeral service licensee in North Carolina) having physical possession of a dead body must make reasonable efforts to contact relatives of the deceased or others who may wish to claim the body for final disposition. In this context, a "person" having possession of a

body could include officers, employees, and agents of the State or of any unit of local government, as well as a hospital, nursing home, or other institution.

There are some exceptions to this general rule:

- The general rule (and the process described in this blog post) does not apply to bodies within the jurisdiction of the medical examiner under [G.S. 130A-383](#) or [G.S. 130A-384](#). This would include deaths resulting from violence, poisoning, accident, suicide or homicide; deaths unattended by a medical professional; deaths occurring in a jail, prison, correctional institution or in police custody; deaths occurring in State facilities operated under [G.S. § 122C-181 et seq.](#); executions of individuals sentenced to death; or deaths occurring under any suspicious, unusual or unnatural circumstance.
- Special procedures apply when (i) the person with possession of an unclaimed body is a funeral director or funeral service licensee, or (ii) the deceased person is a migrant agricultural worker or worker's dependent. Procedures for those situations will be discussed separately below.

When is a deceased body considered “unclaimed”?

A deceased body is considered unclaimed if *either* of the following conditions are met:

- (1) No individual notifies the person in possession of the dead body within 10 days of the date of death that the individual wishes to dispose of the dead body; or
- (2) All individuals who have expressed interest in arranging for disposition of the dead body have ceased communicating with the person in possession of the dead body for five days, and (i) at least 10 days have passed from the date of death, and (ii) the person in possession of the dead body has used reasonable efforts to contact all individuals interested in arranging for final disposition.

The 10-day periods referenced in conditions (1) and (2) above may be shortened by the county DSS director if the director determines that the body will not be claimed for final disposition within the 10-day period ([G.S. 130A-415\(b1\)](#)). The statute does not provide any guidance on how a DSS director might make such a determination, meaning that it appears to be entirely within the DSS director's discretion.

During the 10 days allowed for determination that a body is unclaimed, the body must be stored in the nearest refrigerated facility that can provide such storage ([10A NCAC 39B.0102\(e\)](#)). The body remains in the legal custody of the person, institution, or agency having charge or control of the body until after the expiration of the time required by [G.S. 130A-415](#) following death ([10A NCAC 39B.0102\(d\)](#)).

Notably, a body should not be considered “unclaimed” if the deceased person has made an “anatomical gift,” meaning that the person elected to donate all or part of their body after death for the purpose of transplantation, therapy, research, or education. *See* [G.S. 130A-415\(f\)](#). More information about anatomical gifts and determining whether a decedent has made an anatomical gift is available at Part 3A of Article 16 of G.S. § 130A (the Revised Uniform Anatomical Gift Act, [G.S. § 130A-412.3 et seq](#)) and [G.S. § 90-602](#).

Once a body is determined to be “unclaimed,” what happens next?

After reasonable efforts have been made to contact relatives or others may wish to claim the body, the person or entity with possession of the body must notify a member of the [Commission of Anatomy \(G.S. 130A-415\(a\) and \(b\); 10A NCAC 39B.0102\(a\)\)](#). The Commission of Anatomy was established in 1975 by [G.S. 130A-33.30](#) and is charged with ensuring a sufficient number of human bodies for the study of anatomy in the state of North Carolina. If a Commission member cannot be reached by the person in possession of the unclaimed body, the person must contact the nearest medical school to arrange for refrigerated storage of the body until a Commission member can be reached ([10A NCAC 39B.0102\(a\)](#)).

If the body remains unclaimed within 10 days after death, it may be received by the Commission of Anatomy ([G.S. 130A-415\(b\)](#)). Upon request of the Commission, the person with possession of the body must deliver the body to the Commission or permit the Commission to take and remove the body ([G.S. 130A-415\(a\)](#)). If the Commission member agrees to accept the body, the notifying person, institution, or agency, with the concurrence of the Commission member, must request a funeral home or other suitable carrier to transfer the body to a medical school ([10A NCAC 39B.0102\(a\)](#)). If the body is not claimed for burial, the medical school receiving it (as allocated by the Commission) must pay all expenses for the embalming and delivery of the body for storage and for reasonable expenses arising from efforts to notify relatives or others ([G.S. 130A-415\(b\); 10A NCAC 39B.0102\(h\)](#)).

Officers, employees, or agents of a county are *not* required to notify the Commission regarding the bodies of minors who were in the custody of the county at the time of death and whose final disposition will be arranged by the county ([G.S. 130A-415\(g\)](#)).

What if the Commission of Anatomy declines to receive an unclaimed body?

If the Commission declines to receive an unclaimed body, the person with possession of the body must inform the DSS director *of the county that is responsible for the expense of the final disposition of the body* ([G.S. 130A-415\(c\)](#)). Which leads to the question—which county is responsible for that expense? [G.S. 130A-415\(c1\)](#) clarifies that the county responsible for the expense of final disposition will be the decedent’s county of *residence*. If the deceased is not a resident of North Carolina, or if the county of residence is unknown, the responsible county will

be (i) the one in which the death occurred or, (ii) if the county of residence and death of the decedent are unknown, the county where the deceased body is located ([G.S. 153A-257\(a\)\(2\)](#)).

Determining the decedent's county of residence (for purposes of identifying the responsible county) can sometimes be challenging. State law provides a circular definition, stating that "a person has legal residence in the county in which he resides" ([G.S. 153A-257\(a\)\(1\)](#)).

Importantly, a person who is in a "hospital, mental institution, nursing home, boarding home, confinement facility, or similar institution or facility" does not *automatically* have "legal residence" in the county where the institution or facility is located ([G.S. 153A-257\(a\)\(2\)](#)). For those who wish to explore this topic further, [this blog post](#) by my colleague Aimee Wall discusses the "county of residence" determination in the context of providing adult protective services.

Once the person with possession of the unclaimed body notifies the DSS director in the responsible county, all interests in and rights to the unclaimed body vest in the DSS director. The DSS director must then arrange for prompt final disposition of the body, either by cremation, hydrolysis, or burial ([G.S. 130A-415\(c\)](#)); *see also* [G.S. 90-210.136](#), regarding alkaline hydrolysis).

Who bears responsibility for costs of disposition incurred by DSS?

After paying for the disposition of the body, the county has a claim against the deceased person's estate for reasonable costs of disposition and the costs of efforts made to notify relatives and others of the death against the deceased person's estate. *See* [G.S. 28A-19-6](#) (order of payment of claims against a decedent's estate) and [G.S. 28A-19-8](#) (funeral expenses of decedent).

Reasonable costs of disposition and the costs of efforts made to notify relatives and others of the death are considered "funeral expenses" for purposes of those statutes ([G.S. 130A-415\(c1\)](#)).

If the costs of disposition and notification efforts can't be satisfied from the deceased person's estate, the deceased person's *county of residence* must bear the expenses. If the deceased person is not a resident of North Carolina, or if the county of residence is unknown, those expenses must be borne by (i) the county in which the death occurred, or (ii) if the county of residence and death of the decedent is unknown, the county where the deceased person was located. *See* [G.S. 130A-415\(c\)](#). In some cases, North Carolina counties choose to have the county in which the decedent passed away carry out the task of the final disposition of the body, and then the county of residence subsequently reimburses that county for the costs.

What if the person or entity with possession of a deceased body is a funeral director or funeral service licensee?

If a funeral director or funeral service licensee doing business within North Carolina has physical possession of a deceased body, that person must make reasonable efforts to contact relatives of

the deceased or other persons who may wish to claim the body for final disposition. See G.S. 130A-415(j) and (k). A body will be considered “abandoned” if all persons who have expressed interest in arranging for the disposition for the body have ceased communication with that funeral director or funeral service licensee for five days, AND either of the following conditions are met:

- The body remains unclaimed for 10 days, or
- The right to authorize the type, method, place, and disposition of the dead body is waived under G.S. 130A-420(b1) or G.S. 90-210.124(b).

Both G.S. 130A-420(b1) and G.S. 90-210.124(b) list a number of different individuals who may authorize the type, method, place, cremation, and disposition of a decedent’s body. If no one in these lists of statutorily authorized individuals exercises his or her right to dispose of the decedent’s body within *five days of notification* or *10 days from date of death* (whichever is earlier), those individuals will be deemed to have waived their rights to authorize disposition of the decedent’s body or to contest disposition.

If the funeral director or funeral service licensee receives the dead body from any other “person” (including any officers, employees, and agents of the State or of any unit of local government, as well as a hospital, nursing home, or other institution), the 10-day period for determining that a body is “unclaimed” will run concurrently with any period imposed on that person or entity.

If the body meets the conditions described above for being “abandoned,” the funeral director or funeral service licensee must notify the Commission of Anatomy. If the Commission of Anatomy does not request delivery of the abandoned body within *two days* of receiving the notification from the funeral director or funeral service licensee, or if the Commissioner of Anatomy declines delivery of the abandoned body, then the funeral director or funeral service licensee must notify the DSS director in the county *where the abandoned body is located* (G.S. 130A-415(k)).

The notice to the county DSS director from a funeral director or funeral service licensee must include a sworn statement that

1. The body is an abandoned dead body,
2. Reasonable efforts have been made to inform relatives and others of the death, and
3. The Commission of Anatomy has failed to request or has declined delivery of the abandoned dead body.

After receiving such a sworn statement, the DSS director must arrange for disposition of the abandoned body by cremation, hydrolysis, or burial (G.S. 130A-415(k)). After paying for the final disposition, the county that bore the costs has a claim for reasonable funeral expenses

against the decedent's estate. If the claim cannot be recovered from the estate, the costs must be borne by the responsible county, as described in more detail above. See [G.S. 130A-415\(k\)](#).

What if the deceased person was a migrant agricultural worker or a migrant agricultural worker's dependent?

For migrant agricultural workers and their dependents, state law shifts responsibility for disposition of unclaimed bodies from the counties to the state. Any person who has *knowledge* of the death of a migrant agricultural worker or a worker's dependent must immediately report the death to the DSS in the county in which the body is located ([G.S. 130A-418\(a\)](#)). This report must include any information regarding the deceased person, including identity, place of employment, permanent residence, and the name, address and telephone number of any relative and any interested person. State law defines the term "migrant agricultural worker" to mean "a worker who moves in response to the demand for seasonal agricultural labor" ([G.S. 130A-417](#)). The term is defined broadly enough to apply to *any* worker who fits in this category, regardless of the person's citizenship status or country of origin. A "dependent" refers to any child, grandchild, spouse, or parent of a migrant agricultural worker who moves *with* the migrant agricultural worker in response to the demand for seasonal agricultural labor ([G.S. 130A-417](#)).

After receiving the report, DSS must notify the NC Department of Health and Human Services ("NC DHHS") of the death. NC DHHS then has the duty to make a reasonable effort to inform the next-of-kin and any interested person of the death ([G.S. 130A-418\(a\)](#)). If the identity of the person cannot be determined within a reasonable period of time, or if the body is unclaimed 10 days after death, the body must be offered to the Commission of Anatomy ([G.S. 130A-418\(b\)](#)). If the Commission of Anatomy does not request the body, [G.S. 130A-418\(b\)](#) authorizes and directs NC DHHS to arrange for final disposition of the deceased body, so long as the decedent's relatives or other interested persons are unable to provide for the final disposition of the body. If the decedent's estate, relatives, or other interested persons are able to provide for the disposition of the body, but cannot arrange transportation of the body to the deceased person's legal residence or the legal residence of the relatives or interested persons, [G.S. 130A-418\(c\)](#) directs DHHS to allocate up to \$200 to defray the transportation expenses.

Conclusion

This is a grim topic, but one that unfortunately may be of increasing relevance if pandemic-related deaths continue to surge in some North Carolina counties. DSS directors should be prepared to handle such surges by having a clear plan in place for transportation and final disposition of unclaimed bodies, delegation of the director's authority to exercise responsibility over unclaimed bodies to other DSS employees (as needed), determining responsibility for costs associated with disposition, and recovering associated costs where applicable.