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FISCAL IMPACT REPORT

ORIGINAL DATE 2/26/19

SPONSOR Bash/Pratt LAST UPDATED _____ HB 655

SHORT TITLE Medical Investigations Act SB _____

ANALYST Hawker

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21	FY22	FY23		
	(\$260.0)	(\$260.0)	(\$260.0)	(\$260.)	Recurring	Federal Funds

Parenthesis () indicate revenue decreases

Conflicts with HB 585, HB 586

Relates to appropriation in the General Appropriations Act: section 4 of HB2/HAFCS appropriates \$5.3 million in general fund to the office of the medical investigator.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Department of Health (DOH)
 Department of Public Safety (DPS)
 Indian Affairs Department (IAD)
 New Mexico Attorney General (NMAG)
 University of New Mexico Health Sciences Center (UNMHSC)

SUMMARY

Synopsis of Bill

House Bill 655 repeals Sections 24-11-1 through 24-11-9 NMSA 1978, pertaining to Medical Investigations, sections 1 through 16 of HB 655 establishes the Medical Investigators Act; sections 17 – 21 amends current statutes; section 22 repeals statutes.

Section 1: establishes the title.

Section 2: creates definitions.

Section 3: creates the Board of Medical Investigators. The composition is the same as in 24-11-1 NMSA 1978, this section is repealed by HB 655.

Section 4: creates the Office of the Medical Investigator (OMI), establishing the qualifications for the Chief Medical Investigator.

Section 5: establishes which records shall be kept by OMI. Allows OMI to use in research and educational publications and forums de-identified photographs, radiological images and medical information.

Also establishes photographs kept as a part of the final case investigation records by OMI shall only be released only authorization of the Chief Medical Investigator or designee. Upon authorization, photographs can only be provided to law enforcement, court officers, public health authorities, physicians, and next of kin. All other final case investigation records kept by OMI shall be released in accordance with the Inspection of Public Records Act.

Section 6: allows the Board of Medical Investigators to establish fees.

Section 7: OMI shall be afforded prompt access and authority to receive all relevant medical and mental health records pertinent to an investigation. Information shall be kept confidential, except as disclosed through reports and death certificates issued.

The Chief Medical Investigator or Designee may administer oaths and issue subpoenas. The process of servicing the subpoena is established. If a served person neglects or refuses to comply, OMI may apply to the district court where the subpoena was served or the county where the subpoena was responded to for an order compelling compliance. Failure to comply with the district court's order shall be punishable as contempt.

Section 8: establishes the duties of OMI; including OMI is to provide without charge a complete record of finding in any case to the district attorney, law enforcement authorities and next of kin upon request. OMI may charge fees to provide reports and other materials to all other requestors.

OMI shall be sensitive to the cultural, religious or personal beliefs of next of kin.

OMI shall provide testimony in criminate cases upon valid subpoena. Testimony in civil cases and non-jurisdictional criminal cases shall be subject to a professional services fee.

Section 9: establishes the deaths to be investigated. OMI has jurisdiction within the exterior boundaries of New Mexico, exclusive of sovereign tribal domains or federal military or medical installations for deaths as specified in the section.

Section 10: establishes criminal penalties for death scene investigations.

Section 11: establishes provisions for post-mortem examinations and autopsies. Extended evaluation or an autopsy shall be conducted as necessary and may be performed over the implicit or explicit objections, including cultural, religious or personal objections, of the next of kin or other parties.

Section 12: establishes provisions for OMI's examination of organs and tissues. OMI may retain organs, tissues and other specimens from a body for diagnostic purposes; for future examination or reference; for processing, quality control, analysis, testing, consultation or evidentiary purposes.

Section 13: establishes processes for disposition of bodies and property. Unidentified bodies must be held for at least three months. Where possible, dental examination, fingerprints, full body radiography or computed tomography scan and collection of samples for potential deoxyribonucleic acid analysis shall be performed.

Identified bodies which have not been claimed after two weeks may be released for anatomical donation, creation, or burial.

OMI may freeze, properly embalm or prepare for preservation a body for such a time as deemed necessary by the Chief Medical Investigator or Designee.

Section 14: establishes the exhumation process. OMI may conduct exhumations to determine the cause or manner of death, to investigate a public health or safety matter, to obtain evidence or to address a medical or legal issue. OMI may utilize local law enforcement or state police if needed.

Section 15: provides for tribal collaboration. OMI shall make reasonable efforts to determine if a deceased was a member of an Indian nation, tribe or pueblo. OMI shall use due diligence to avoid an autopsy and shall use the least invasive means possible when the next of kin or tribal representative offers cultural or religious objection to an autopsy.

When an autopsy is required, OMI shall attempt to provide advance notice of the autopsy to the next of kin or to the tribal representative. A law enforcement officer of the Indian nation, tribe or pueblo of the deceased shall be allowed to observe the forensic autopsy.

OMI shall provide documentation on the forensic autopsy upon request to the next of kin or tribal representative.

Upon conclusion of an autopsy conducted on a deceased who was a member of an Indian nation, tribe or pueblo, the office shall use all due diligence to consult regarding the disposition of the body. Unless other treatment of the remains is required, OMI shall replace all body parts with the exception of those materials potentially required for diagnosis.

Section 16: establishes processes and penalties for the reporting of deaths.

Section 17: amends Section 24-12-1 NMSA 1978, modifying the procedure for notifying the relatives of the deceased and in cases for which there is no claimant, for disposition of the body of the deceased.

Section 18: amends Section 24-12-2 NMSA 1978 to further modify the procedure for disposing of the body of the deceased in cases for which there is no claimant. OMI may permit the body to be used for education or release it to other government officials for final disposition. Currently the statute only allows the body to be used for medical education.

Section 19: amends Section 24-12-4 NMSA 1978 to allow autopsies to be performed by pathologists, or under the supervision of a licensed physician a medical student or resident.

HB 655 strikes subsections C and D which allowed pathologists to perform autopsies or post-mortem examination only under the written direction of the district attorney or under the direction of the state, district, or deputy medical investigator.

Section 20: amends Section 24-14-20 NMSA 1978 to extend from five days to ten days the length of time allowed for filing a death certificate with the Department of Health.

Section 24-14-20C NMSA 1978 is amended to extend from forty-eight hours to ten days after death the length of time allowed for the medical certification to be completed and signed.

HB 655 adds a provision whereby deputy medical investigator designate employed by an outpatient hospice program may pronounce the death of a hospice patient.

Section 24-14-20F NMSA 1978, requiring in cases where death occurs without medical attendance as set out in Section 24-14-20C or Section 24-14-20D NMSA 1978 or when death occurs more than ten days after the decedent was last treated by a physician the case shall be referred to the state medical investigator for investigation to determine and certify the cause of death is stricken.

Section 21: amends Section 24-14-23 NMSA 1978 to allow the Office of the Medical Investigator to charge a fee for a permit for cremation of a body.

Section 22: repeals Section 66-7-211 NMSA 1978, which requires monthly reporting to the Department of Transportation the death of any person during the preceding calendar month that resulted from a traffic accident. Also repeals Sections 24-11-1 through 24-11-9 NMSA 1978, Medical Investigations.

FISCAL IMPLICATIONS

HB 655 increases the time allowed for the filing of death certificates from five to ten days which would cause DOH to be delinquent in delivering death certificate data to the National Center for Health Statistics and to the Social Security Administration. Such delinquency would constitute a violation of both contracts. DOH estimates the impact of this violation to be as much as \$260 thousand annually in lost federal funding.

SIGNIFICANT ISSUES

Section 4, subsection D, page 6, lines 19 -20 allows OMI to “maintain as many regional facilities as the chief medical investigator deems necessary”. “Regional facilities” is not defined.

Section 7 provides for the Chief Medical Investigator or Designee to issue:

- subpoenas to compel attendance of any witness in an investigation;
- subpoenas requiring a witness to produce books, records, documents, files or other things under the control of the person served;
- subpoenas for the production of confidential medical records, mental health records, drug and alcohol abuse records and other relevant information when conducting an investigation.

Sections 9 and Section 16 contradict. Section 9, page 13, lines 6 – 9, requires anyone who becomes aware of a death within OMI jurisdiction must report it “immediately” to OMI and potentially to law enforcement. Section 16, page 20, lines 19 -20 requires individuals to report specified deaths “to the appropriate law enforcement agency or the office within a reasonable period of time”

DPS is concerned with section 10, page 14, lines 7 and 8: “A scene shall be secured by a law enforcement agency and kept free of disturbance.” According to OMI’s *Annual Report*, in 2017 Deputy Medical Investigators conducted 4,604 scene investigations. DPS is concerned this language would give OMI authority to require a law enforcement presence at scenes that law enforcement currently do not respond to. It is overly broad, in that OMI could require law enforcement to maintain any death scene for long periods of time.

DPS expresses concerns with section 10, subsection G, pages 14 – 15, lines 20 – 4 as the language would limit law enforcement’s control over the greater crime scene and perishable evidence within it. A premature removal of the decedent could damage perishable evidence as there is often evidence on the access path to the decedent, including footwear impressions and bloodstain patterns. Law enforcement must have time to identify, document and collect evidence prior to the retrieval of the decedent.

The criminal penalty provision set forth in Section 10, subsection G of HB 655, pages 14 – 15, lines 20 -4, appear to contradict Section 16, pages 20-21, lines 15 – 6. Section 10 provides touching a body required to be investigated by OMI “willfully and unnecessarily” without OMI’s permission constitutes a petty misdemeanor whereas Section 16 provides that a person shall not “touch, remove, disturb” a body required to be reported to OMI. The penalty in Section 16 is a misdemeanor and a fine up to \$5 thousand or imprisonment not to exceed one year.

Section 15 of HB 655 provides guidelines for tribal collaboration. IAD observes consideration should be given to the fact that tribal members who fall within the jurisdiction of OMI may include American Indians or Alaska Natives that are not members of the nations, tribes or pueblos within New Mexico. Effort should be taken to determine tribal association of the deceased person prior to an autopsy being performed.

Section 20, page 27, line 12 changes the number of days for filing of a death certificate with DOH from five to ten. DOH observes this change would affect family members of the deceased by increasing the time for them to receive death certificates. Current statute, Section 24-14-20 NMSA 1978, and rules are consistent with the National Model State Vital Statistics Act and Regulations set forth by the Centers for Disease Control and Prevention and the National Center for Health Statistics: <https://www.cdc.gov/nchs/data/misc/mvsact92b.pdf> . DOH is unaware of any state that does not require the death certificate to be filed within five days.

The qualifications necessary to be the Chief Medical Investigator will be changed. Currently the state medical investigator is required to be a physician licensed to practice in New Mexico and as practical be trained in the fields of pathology and forensic medicine, Section 24-11-3A NMSA 1978. HB 655 stipulates the Chief Medical Investigator shall be a licensed physician who is certified in forensic pathology by the American Board of Pathology and has at least six years of post-training experience as a forensic pathologist.

Section 24-11-3 NMSA 1978 provides for the qualifications and appointment of district and deputy medical investigators. These provisions are not included in HB 655.

NMAG notes, Section 24-11-3I NMSA 1978 provides: “funds for the operation of the state and district medical investigators’ offices shall be appropriated to and administered by the University of New Mexico School of Medicine.” This language is absent from HB 655, indicating that OMI would be an independent agency for the purposes of legislative appropriations.

UNMHSC states HB 655 will improve OMI function and foster a smoother articulation with public health, public safety and criminal justice authorities, health care providers, as well as decedents’ families. It clarifies jurisdictional scope and authority, qualifications for the Chief Medical Investigator, and procedures for disposition of bodies.

ADMINISTRATIVE IMPLICATIONS

Funeral directors and other customers will have questions about the new statutes and may utilize DOH’s Vital Records Call Center for information. DOH would need to update administrative rules.

The IAD Secretary and supporting staff may be called upon to provide collaboration, coordination and communication between New Mexico’s nations, tribes and pueblos, federal agencies and tribal organizations within the state.

CONFLICT

HB 585 amends Section 24-1-9 NMSA 1978, whereas HB 655 proposes to repeal the Section.

HB 586 amends Section 24-11-2, whereas HB 655 repeals the Section.

TECHNICAL ISSUES

HB 655 strikes Sections 24-1-1 through Section 24-11-9 NMSA 1978, retaining Section 24-11-10 NMSA 1978, establishing penalties. If this is not an oversight, HB 655 conflicts with Section 24-11-10 NMSA 1978. NMAG observes: the phrase “district medical investigator” in Section 24-11-10 NMSA 1978 is inconsistent with HB 655, which contains no provisions addressing the appointment of district medical investigators. Similarly, the “state medical investigator” is not the term used by HB 655, which instead refers to that position as the Chief Medical Investigator. More importantly, HB 655 contains its own penalty provisions in its Section 16 (see pages 20 and 21). These provisions conflict with Section 24-11-10 NMSA 1978 because HB 655 proposes to make certain reporting failures full misdemeanors, in current statute they are penalized as a petty misdemeanors.

NMAG points out there are other statutes that HB 655 does not propose to amend that use the term “state medical investigator”, such as Section 12-10A-6 NMSA 1978; Section 18-6-11.2 NMSA 1978; Section 61-32-5 NMSA 1978. Inconsistent terminology could lead to confusion.

IAD notes: “a tribal member, whether living or deceased, is a member of a sovereign tribal government, and traditionally could be considered an ancestor of that tribe. When that person becomes deceased, this does not change his/her status, this person is still recognized as a member

of that tribe. Therefore, throughout the text of HB655, as a technical correction, change the past tense “was” to “is” when describing the deceased person as a member of a tribal nation.”

OTHER SUBSTANTIVE ISSUES

New Mexico is home to 23 nations, tribes, and pueblos, and many tribal members may live outside of formal tribal boundaries, which would put them under the jurisdiction of the OMI. Each tribal community has a unique process of death that has been passed down through hundreds of generations, and generally focuses on end-of-life care and after-life care. This care may dictate that the first person contacted to report a death would be a traditional care giver who could, then be in violation of Section 16 (page 20). This traditional care also would dictate to the family members the burial time frame, disposition of body parts, including those taken for testing, and the availability of photographs.

New Mexico’s State-Tribal Collaboration Act, Section 11-18-1 NMSA 1978, mandates a level of cultural competency training.

IAD suggests a formal annual training be developed with OMI and traditional tribal ways. This could be a two-way sharing conducted in a neutral place, both recognizing the mandates of OMI and traditional tribal ways. There are protocols already established through the FBI and BIA with tribal communities, and building relations with tribal representatives and leaders. This should be more than an “open house”.

ALTERNATIVES

OMI and DOH are working on a major project to sync databases to allow for a more seamless method for filing death certificates. When complete, the transfer of death certificate information between systems will improve the ability of medical certifiers to complete and file death certificates within the current, five day, timeframe.

VKH/gb