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FISCAL IMPACT REPORT

SPONSOR <u>Anyanonu/Johnson</u>	LAST UPDATED <u>3/10/23</u>
	ORIGINAL DATE <u>2/21/23</u>
SHORT TITLE <u>Disposition of Deceased Next of Kin</u>	BILL NUMBER <u>House Bill 407/aHGEIC/aHF1#1</u>
	ANALYST <u>Helms</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
		Indeterminate but minimal	Indeterminate but minimal			UNM Operating Budget for OMI

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Responses Received From

University of New Mexico (UNM, location of NM Office of the Medical Investigator (OMI))
Office of the Attorney General (OAG)

SUMMARY

Synopsis of HF1#1 Amendment to House Bill 407

The House Floor Amendment to House Bill 407 (HB407/aHGEIC/aHF1) amends Section 1 of Section 24-12-1 NMSA 1978 to add language clarifying “if no claimant is found who will assume the cost of burial, the official having charge or control of the decedent shall notify the county, stating, when possible, the name, age, sex, legal next of kin and cause of death of the deceased and any other information obtained that the county could use to conduct due diligence. The county may perform additional due diligence if reasonably determined necessary.”

The House Floor Amendment to House Bill 407 also amends burial expenses to be the amount of (rather than up to) \$1,000; 14 days, rather than 15, is reasonable opportunity to notify next of kin; and for veterans qualifying for burial services, their remains would be stored for one year.

Synopsis of HGEIC Amendment to House Bill 407

The House Government, Elections and Indian Affairs Committee amendment to House Bill 407 (HB407/aHGEIC) strikes “commercial establishment” from Section 5(B) and 5(D) and in Section 10, clarifies an amount of \$1,000 (rather than an amount “up to” \$1,000) is the expense

to be paid for burial or cremation of an unknown decedent.

Synopsis of House Bill 407

House Bill 407 (HB407) amends and updates various statute related to unclaimed decedents and would clarify limits on disposition of unclaimed decedents, statute on legal next of kin and attempts to locate legal next of kin, payment amounts for disposition, and expenses for opening and closing a grave. Additionally, HB407 removes “indigent persons” from the scope of the medical examiner’s purview concerning dispositions of a body, and more clearly defines who can makes decisions about a deceased body, updates language for the penalty portion of the section to be in-line with the criminal code.

The effective date of this bill is July 1, 2023.

FISCAL IMPLICATIONS

House Bill 407 does not contain an appropriation.

Analysis from the University of New Mexico (UNM), which houses the New Mexico Office of the Medical Investigator (OMI) at the UNM School of Medicine, estimates HB407 would have minimal fiscal impact but could reduce operational costs for the OMI, including staffing, storage, and other costs.

SIGNIFICANT ISSUES

HB407 makes changes in defining and clarifying next of kin and reasonable outreach for an unclaimed decedent, the length of storage limit for unclaimed decedents, costs associated with burial or cremation for unclaimed decedents, and costs associated with opening and closing a grave.

UNM analysis cites that due to delays in timely processing of unclaimed decedents and lack of clear language around storage for unclaimed decedents, the Covid-19 pandemic led to circumstances where the OMI required nine refrigerated trucks to meet demands of decedent storage. The New Mexico Office of the Medical Investigator (OMI) housed at the University of New Mexico’s School of Medicine and the New Mexico Association of Counties have been working together over the course of the past year to propose statutory changes that are in alignment with statutes in other states and jurisdictions. UNM analysis notes:

HB407 addresses and reduces the length of storage of unclaimed decedents, allowing timely disposition of remains in congruence with other state laws; for example, after 10 days, a decedent is considered unclaimed in the state of Virginia. (<https://law.lis.virginia.gov/vacode/title32.1/chapter8.1/section32.1-309.2/>)

Given the significant number of unclaimed decedents who fall under the care of the OMI, a 15-day time limit is necessary to fall within decedent storage capacity, with some reserve in the event of a mass fatality. Approaching or going over cooler capacity for storage at the OMI increases operational costs, requires additional staffing, and strains operations overall. The proposed 15-day timeframe by which a decedent would be considered unclaimed, with next-of-kin waiving their right to claim, provides timely

disposition of remains, and provides any forthcoming family members the ability to claim cremated remains.

Per an increase in costs for cremation or burial expenses, UNM analysis notes:

Currently, the expense limit that can be paid to funeral homes/crematories is no more than \$600 per decedent, which creates a monetary challenge to encourage businesses to accept contracts from counties who are responsible for remitting payment. The expense amount has not been updated in more than two decades and the proposed changes are a modest compensation in keeping with the cost of services over these years. NMSA 24-13-3 Section 10 addresses the expenses for burial or cremation, such that “the burial or cremation expenses may be paid by the county out of the general fund or the health care expenses fund *in an amount up to* one thousand dollars.” Similarly, the expense for opening and closing a grave is proposed in the same language with regard to expense. Making the cremation and burial rate consistent in statute at a fixed rate, ensures that funeral homes and crematories receive the same compensation for the same service throughout the state. Given the cost increases since the original statute was established, \$1,000 is a reasonable rate for both cremation (burial when appropriate), as well as \$1,500 for the cost for opening and closing a grave.

TECHNICAL ISSUES

Analysis from the Office of the Attorney General notes some technical issues with HB407. While HB407 strikes language, “the medical examiner shall issue a certificate of determination” as to an unclaimed body and replaces it with “the medical examiner shall determine...,” there is not clarification of the appropriate mechanism for the medical examiner to use to make their determination or communicate said determination to the county, nor is there a description of clarification as to how that record will be documented and kept. Additionally, Section 1(D) states, “In no case shall an unclaimed body be disposed of in less than two weeks from the date of the discovery of the body,” while Section 1(E) allows 15 days.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

UNM analysis notes:

If HB407 is not enacted, unclaimed decedents will remain in cooler storage for periods that range from one month to up to one year, with the same end result of cremation. Currently, the cold storage capacity at the OMI ranges from 180 (months with reduced caseload) to 250 decedents (months with increased case load). The increased case load months places the OMI at capacity for storage, with no immediate ability to fulfill state mandated duties in the event of a mass fatality or other event.

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