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FISCAL IMPACT REPORT

SPONSOR <u>Baca/Sanchez/Lara/Castellano</u>	LAST UPDATED _____
	ORIGINAL DATE <u>2/21/23</u>
	BILL
SHORT TITLE <u>Disposition of Deceased Next Kin</u>	NUMBER <u>House Bill 463</u>
	ANALYST <u>J. Torres</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
UNM	No fiscal impact	Indeterminate but possibly positive	Indeterminate but possibly positive			

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent version of this legislation.

Relates to House Bill 407

Sources of Information

LFC Files

Responses Received From
 New Mexico Attorney General (NMAG)
 University of New Mexico (UNM)
 Corrections Department (NMCD)

SUMMARY

Synopsis of House Bill 463

House Bill 463 relates to the disposition of dead bodies and notification of next of kin. The bill requires counties to give reasonable opportunity for legal next of kin to take possession of an unclaimed decedent. Legal next of kin is defined as the surviving spouse, a majority of the surviving adult children of the decedent; the surviving parents of the decedent; a majority of the surviving siblings of the decedent; the adult person of the next degree of kinship in the order named by New Mexico law to inherit the estate of the decedent; adult who has exhibited special care and concern for the decedent and is aware of the decedent’s views and desires regarding the disposition of the decedent’s body and is willing and able to make a decision about the disposition of the decedent’s body. If reasonable opportunity has been afforded to the legal next of kin, the decedent will be deemed unclaimed and the legal next of kin deemed to have waived the right to possession of the body. Unless the medical investigator retains the body in accordance with Section 24-12-2 NMSA 1978, the county will authorize disposition of the body.

The bill increases the cremation amount that the county would pay, out of the general or health

care assistance fund, from \$600 to \$1,000. Section 24-13-2 NMSA 1978 is repealed.

The misdemeanor and felony penalties for either an unauthorized post mortem examination or unlawful sale or disposition of an unclaimed body remain intact and now refer to the appropriate statutory section for each of the specified crimes.

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

FISCAL IMPLICATIONS

UNM stated that it would have potential reduced costs. NMAG and NMCD indicated no fiscal impact.

SIGNIFICANT ISSUES

NMAG states:

The bill removes ‘the medical investigator shall issue a certificate determining’ as to an unclaimed body, and replaces it with ‘the medical investigator shall determine...’ It makes no mention of the mechanism by which the medical examiner shall make such a determination and communicate that determination to the county, or how that record will be documented and kept.

UNM states:

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. The COVID-19 pandemic exacerbated the delay in timely processing of unclaimed decedents, such that the OMI required 9 refrigerated trucks to meet the demands of decedent storage. As such, the proposed changes of 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/>)

Currently, the OMI conducts legal next of kin searches for decedents within the OMI’s care, according to agency-defined “due diligence” steps. These due diligence steps include scene investigation personal effects, public records internet searches, hospital medical records inquiries, posting of legal name on the OMI website, Veteran’s Affairs inquiries, and other methods. When no known legal next of kin is identified, the decedent is referred to the county of death, who may conduct their own legal next of kin search, or approve for unclaimed burial/cremation.

Given the cost of burial, cremation is the most common method of tissue disposition. However, burial remains an option for certain cultural and religious circumstances.

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.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

UNM states:

Currently, HB407 contains language where the services rendered by the crematorium/funeral is ambiguous. HB463 addresses the language in section 9.

TECHNICAL ISSUES

NMAG states:

- Section 1(B) states ‘person’ when it should probably be ‘persons’.
- Section 1(B) requires due diligence to notify ‘legal next of kin or other claimant,’ but does not identify who ‘other claimant’ could be.
- Section 1(E) 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(D) defines reasonable opportunity to claim the body as fifteen days, and Section 8 states fifteen days as well.

ALTERNATIVES

NMAG states:

- Page 2 line 23 make ‘person’ ‘persons’
- Page 4 line 17 strike ‘two weeks’ and insert ‘fifteen days’

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

UNM states:

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.

As noted by UNM, the Covid-19 pandemic exacerbated the delay in timely processing of unclaimed decedents. UNM also states that the bill’s 15-day window is adequate to process unclaimed bodies in a timely manner that also preserves resources and maintains operational costs.

JT/al/ne