

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 2/20/19

SPONSOR Bash/Pratt/Ely LAST UPDATED _____ HB 585

SHORT TITLE Access to Health Records in Investigations SB _____

ANALYST Chenier

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Indeterminate				

(Parenthesis () Indicate Expenditure Decreases)

Related to House Bill 655, the Medical Investigators Act

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Defender Department (PDD)

University of New Mexico – Health Sciences Center UNM-HSC

Department of Health (DOH)

Department of Public Safety (DPS)

SUMMARY

Synopsis of Bill

House Bill 585 would enhance the power of a state, district, or deputy medical investigator to gain access to electronic or physical copies of medical or mental health records, radiologic images, or other medical studies relevant to an investigation being performed pursuant to Chapter 24, Article 11, NMSA 1978. Access would be allowed in the format in which they are maintained with the issuance of a subpoena. A state, district, or deputy medical investigator would be required to keep the information collected confidential, except as needed to complete reports and death certificates issued pursuant to Chapter 24, Article 11, NMSA 1978. The bill also addresses the types of information that may be included in a subpoena for medical information and the consequences of not complying with a subpoena.

FISCAL IMPLICATIONS

PDD said this bill is unlikely to affect the overall caseload of PDD. However, if the significant issues identified, *infra*, were to result in more and protracted court hearings regarding access to

evidence, an effective defense, discovery or disclosure, the overall impact could result in greater expenditure of Law Offices of the Public Defender resources, precipitating a need for additional attorneys, because the public defender system is already overloaded.

SIGNIFICANT ISSUES

UNM-HSC said that like other physicians, forensic pathologists working at the Office of the Medical Investigator (OMI) require prompt access to medical records in order to better understand the decedent's health conditions and previous therapeutic interventions prior to beginning an autopsy. Historically, OMI has had to request these records from health systems with electronic medical records with a subpoena. The records are photocopied after a delay of days to weeks and sent to OMI. At OMI, the records are then scanned and entered into an electronic database. This process is cumbersome, time consuming, and limits the information that forensic pathologists have prior to performing autopsies. The current bill would allow OMI to have access to the records in the format in which they are maintained. OMI has modeled this system with the electronic records at the University of New Mexico Hospital and it is very efficient.

DOH said that the bill may help improve the timeliness of completion of the death certificates the OMI issues as it may help assure that OMI receives all the data they need for their investigations in an efficient manner.

PERFORMANCE IMPLICATIONS

DPS said in possible cases, the State Police asks for and receives completed OMI reports, field investigator reports, and the death certificate's. These reports often contain medical information derived from medical records or information that OMI obtains about the deceased. If the bill changes the types of information OMI includes in its reports, it could impact DPS' death investigations.

TECHNICAL ISSUES

OMI suggested adding the word "immediate" to line 2 page 2 so that it would read: allow immediate access to those records in the format in which they are.

PDD said there are potential disclosure or discovery issues with the proposed bill. "Confidential" is not defined in the context of this statute, so the extent of the confidentiality is open to interpretation. This could result in defense attorneys representing defendants in cases involving a medical investigation from obtaining evidence that is potentially exculpatory or, at the least, constitutes evidence for which effective defense counsel would need to be prepared. Effective defense investigation often require examining more than the report but also the documents and physical evidence, photographs, etc., relied by the medical investigator in reaching conclusions in a report. Consequently, defense attorneys often request materials as part of basic discovery that might constitute confidential information under the bill, resulting in the medical investigator not turning over the materials. Defense attorneys will likely need to litigate through motions to compel to mount a defense and, particularly, to consult with an expert to identify alternate medical opinions in preparation for trials.