



WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

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November 17, 2002

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NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Joe Manchin, Secretary of State, State Register

TO: Martha Barnitt
Health, Division of
Capitol Complex
Building 3, Room 201

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Medical Examiner Rule for Post Mortem Inquiries, 64CSR84**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

- 1. Authorize the agency to promulgate the Legislative rule
 - (a) as originally filed
 - (b) as modified by the agency
- 2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
- 3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
- 4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
- 5. Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

SCANNED

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Division of Health

Subject: Medical Examiner Rule for Postmortem Inquiries, 64CSR84

2002 OCT -3 A 9:46
SECRETARY OF STATE
FILED

PERTINENT DATES

Filed for public comment: June 19, 2002
Public comment period ended: July 19, 2002
Filed following public comment period: July 22, 2002
Filed LRMRC: July 22, 2002
Filed as emergency:

Fiscal Impact: Estimated cost of \$247,648; increase in revenue of \$64,200

ABSTRACT

The proposed rule is new. The following is a section-by-section synopsis of the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 relates to application and enforcement. It states that the rule applies to the state medical examiner's office, the county medical examiner's office and the coroner's office.

Section 3 defines terms.

Section 4 relates to the training and certification of county medical examiners and coroners. It requires county medical examiners to be trained and certified by the Department in the practice of medico-legal death investigation and to participate in and pass a course of study following the guidelines for Medico-legal death investigation promulgated by the National Institutes of Justice of the Office of Justice Programs. It grandfathers in

county medical examiners, who are already practicing as of January 1, 2001, and who have been a county medical examiner for three years.

County coroners are required to meet the same training and certification requirements as county medical examiners. State certification expires after three years and requires attendance at an approved training program and passage of an approved certification exam.

Section 5 relates to authority of the County Medical Examiner (COME), Assistant County Medical Examiner (AcoME), and County Coroner (CC) when investigating a death. It provides that the county medical examiner, the assistant county medical examiner and the county coroner are under the direction of the chief medical examiner. They are also subject to the direction of the county prosecutor and the principle investigative agency of jurisdiction. It prohibits the county medical examiner, the assistant county medical examiner and the county coroner from investigating a death where he or she, in the performance of other medical duties, attended a patient to provide treatment and resuscitation before the patient died.

Section 6 relates to death circumstances that require medico-legal death investigations. It requires the county medical examiner, the assistant county medical examiner and the county coroner to investigate the circumstances of a death when a person dies without benefit of a treating physician, when a person dies due to violence, when a person dies under suspicious conditions, etc.

Section 7 relates to the responsibilities of the COME, AcoME and CC. It requires the county medical examiner, the assistant county medical examiner and the county coroner to be available at all times to perform his or her duties. It allows them, when a death has occurred, to decline to take charge of the body; to take charge of the body and all personal effects and objects that lie close to the body; and to go where the body lies or authorize removal of the body to an appropriate place. It specifies documentation that is required when the county medical examiner, the assistant county medical examiner or the county coroner takes charge of a body.

Section 8 relates to pronouncement, investigation and certification of deaths. It requires the county medical examiner, the assistant county medical examiner and the county coroner to pronounce death when certain specified conditions exist and to record the date and time of the death pronouncement on a form from the office of the chief medical examiner. It requires the county medical examiner, the assistant county medical examiner and the county coroner, in investigating a death, to identify the deceased person and establish proof of identity. It sets forth the methods whereby a deceased person may be identified. If the deceased person cannot be identified, the body is to be referred to the office of the chief medical examiner. This section sets forth methods of identification which the chief medical examiner, deputy chief medical examiner or designated forensic pathologist may use. This section also specifies the procedure for when human remains cannot be tentatively or positively identified.

This section authorizes the county medical examiner, the assistant county medical examiner and the county coroner to obtain medical records and review them for accurate certification of death. It provides that copies of these records, which become part of the medical examiner's file, may not be released upon any request or subpoena.

This section requires the county medical examiner, the assistant county medical examiner and the county coroner to travel to the place of death within one hour under certain specified circumstances and sets forth requirements for examining a deceased person at the scene of death. It requires the county medical examiner, the assistant county medical examiner and the county coroner, after identifying the deceased person, to enter the deceased person's name on the death certificate and affix a toe tag or other identification tag to the body or body bag.

Section 9 relates to obtaining blood, body fluids and tissue material for examination. It provides varying standards for collection of blood, body fluids and tissue material, depending on whether or not the deceased requires transport to the state medical examiner's office; whether or not the deceased was hospitalized; and whether or not the deceased received a blood transfusion prior to death. It requires the county medical examiner, the assistant county medical examiner and the county coroner to use sample containers and forms provided by the office of the chief medical

examiner and to deliver them to the office by mail, by a bonded carrier, or by a courier authorized by the office.

Section 10 relates to transport of the body. It requires the county medical examiner, the assistant county medical examiner and the county coroner to provide for the transport of a body from the place of death in a timely manner in an approved funeral or ambulance vehicle or other conveyance authorized by the office of the chief medical examiner. It requires that the body be enclosed in a clean, moisture-impervious body bag and that the identity of the body be documented by a toe tag or label. Finally, it requires an investigation report from the examination at the scene of death accompany the body or be sent by fax to the autopsy pathologist.

Section 11 relates to circumstances requiring consultation with the OCME. It sets forth those instances where the county medical examiner, the assistant county medical examiner and the county coroner must notify and consult by telephone with the office of the chief medical examiner prior to and following an investigation. Circumstances include homicides, multiple fatality deaths causing three or more deaths, and fire related deaths.

Section 12 relates to documentation of findings obtained by medico-legal death investigation by the CoME, ACoME or CC. It requires the county medical examiner, the assistant county medical examiner and the county coroner, who investigate the circumstances of a death, to use forms provided by the office of the chief medical examiner and to retain a copy of the report for his or her records. Records are required to be retained for at least two years, with obsolete records disposed of in a manner that renders them illegible.

Section 13 relates to authorization for cremation by CoME, ACoME or CC. It requires that requests for cremation of a deceased body be authorized by the office of the chief medical examiner or the county medical examiner, the assistant county medical examiner or the county coroner. It sets forth the steps which the county medical examiner, the assistant county medical examiner and the county coroner must undertake prior to authorizing a cremation and also sets forth those circumstances under which the county medical examiner, the assistant county medical examiner and the county coroner may refuse authorization for cremation. This section authorizes the chief medical examiner to establish a fee for

funeral agencies or crematories requesting cremation for investigation into the circumstances of any death for the purposes of authorization for cremation. The fee goes to the county medical examiner, the assistant county medical examiner or the county coroner.

Section 14 relates to death certificates. It requires the county medical examiner, the assistant county medical examiner and the county coroner, under the supervision of the chief medical examiner or the deputy chief medical examiner, to establish the cause and manner of death and complete the death certificate. When a death is being investigated by the office of the chief medical examiner, only the chief medical examiner or the deputy chief medical examiner or the designated forensic pathologist may list "pending" as the cause of death and may later complete the death certificate when the cause of death has been determined.

Section 15 relates to completion of death certificates by the COME, ACOME and CC. It states that when the county medical examiner, the assistant county medical examiner and the county coroner completes the death certificate, it means that he or she has established the identity of the decedent; has reasonably identified the place of death and place of injury; can reasonably attest to the reason and cause of death; and has reasonably established the time and date of death and of any underlying injury.

Section 16 relates to performance of the forensic autopsy. It authorizes the chief medical examiner or the deputy chief medical examiner or designated forensic pathologist to perform a forensic autopsy when it is necessary to establish a cause or manner of death; establish or confirm the identification of the deceased; prosecute or defend persons named in criminal manners, etc. It states that the prosecuting attorney of the county in which the death occurred or the circuit court judge may request a forensic autopsy.

Section 17 relates to specimens collected and tested. It authorizes the chief medical examiner or the deputy chief medical examiner or the designated forensic pathologist to collect body fluids or tissue and hold them for performance of toxicologic or other analyses to determine any fact or circumstance relative to a medico-legal death investigation. The specimens may include and

are not limited to blood, urine, vitreous fluid, liver or other visceral tissue, bone and hair. It requires the chief medical examiner or the deputy chief medical examiner or the designated forensic pathologist to collect and deliver any material, items or tissues possessing or thought to possess forensic significance to the law enforcement agency of jurisdiction. It authorizes them to consult with or employ outside forensic specialists.

Section 18 relates to release of information. It allows information pertaining to a medical examiner case to be released to the public one hour after the next of kin has been notified. Information which may be released is the name, sex and age of the decedent; the date of the examination; and the name of the pathologist who performed the examination. The office of the chief medical examiner is required to release information obtained by its investigation to the next of kin or the executor of the estate, except when the circumstances of death are the subject of a criminal investigation or criminal prosecution.

Section 19 relates to autopsy reports. It sets forth information which must be included in autopsy reports. It states that the autopsy report shall not include medical records or confidential documents pertaining to the decedent. This section specifies to whom an autopsy report may be released when the death is the subject of criminal investigation or litigation. It authorizes a reasonable fee for copies of autopsy reports and specifies those persons for whom the fee is waived.

Section 20 relates to human remains and personal property. It requires that human remains be released from medical examiner custody to an authorized funeral home or other entity designated by the next of kin, only when accompanied by an appropriately filled out and signed death certificate. It also provides for the release of remains to an organ procurement organization. It also specifies procedures which the office of the chief medical examiner must follow regarding all personal property belonging to and associated with a body of which it has taken charge.

Section 21 relates to release of biological samples from OCME custody. It requires the office of the chief medical examiner to release biological samples directly to a certified and accredited laboratory upon request from the legal next of kin, the county health officer, public health laboratory or the Secretary or any

West Virginia Court Officer who establishes proof of ongoing litigation to which he or she is a party. Requirements are set forth for the release of biological samples where there is an ongoing or pending criminal matter. This section also provides for the production of microscopic slides and the release of histologic samples.

Section 22 relates to retention of biological samples. It specifies time periods for retention of specific types of biological samples. For example, dried blood sample cards must be retained for at least 50 years.

Section 23 relates to maintenance of case files. It requires the office of the chief medical examiner to maintain complete and thorough files for all cases which it investigates and to retain direct custody and control of all original files and reports pertaining to investigations. It states that case files are to be considered confidential medical records. It requires the office to retain autopsy records for at least 50 years, except when the materials can be archived electronically.

Section 24 relates to fee paid to CoME, ACoME and CC by the OCME for performance of duties described by this rule. It requires the office of the chief medical examiner to pay reasonable fees to the county medical examiner, the assistant county medical examiner or the county coroner for the performance of his or her duties, and the fee is to include compensation for expenses directly incurred.

Section 25 relates to charging certain fees for providing testimony or production of opinions. It allows the Commissioner to charge reasonable fees for the provision of testimony or any production of opinion provided by any of the chief medical examiner's employees. The fees are for time spent in case preparation and for presentation of testimony or any production of opinion including time spent in travel and in waiting to provide these services.

Section 26 relates to administrative due process. It references the Department's rule on contested case hearings and declaratory rulings.

Section 27 relates to penalties. It references the Code section regarding penalties.

AUTHORITY

Statutory authority: W.Va. Code, §61-12-3, which provides, in part, as follows:

...(f) The secretary of the department of health and human resources is hereby directed to propose legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code concerning:

(1) The proper conduct of medical examinations into the cause of death;

(2) The proper methods and procedures for postmortem inquiries conducted by county medical examiners and coroners;

(3) The examination of substances taken from human remains in order to determine the cause and manner of death; and

(4) The training and certification of county medical examiners and coroners...

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISIONS OF THE CODE?

Yes.

VIII. OTHER

Counsel has technical modifications to suggest.