



Office of the Attorney General
State of Texas

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ATTORNEY GENERAL

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William R. Archer III, M.D.
Commissioner of Health
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

Letter Opinion No. 98-122

Re: Whether Health and Safety Code section 673.002, which requires the commissioner of health to review and authorize payment by the comptroller for autopsies performed on children under the age of two years, has been superseded by Family Code chapter 264, subchapter F (RQ-1081)

Dear Dr. Archer:

You ask whether the obligation of the commissioner of health ("the commissioner") to review and authorize payment of claims by the comptroller of public accounts for the reasonable and proper costs of autopsies conducted pursuant to Health and Safety Code section 673.002 has been superseded by the provisions of chapter 264, subchapter F of the Family Code.

Chapter 673 of the Health and Safety Code is titled "Sudden Infant Death Syndrome" and section 673.002(a) directs that the death of a child younger than two years old be immediately reported to the justice of the peace, coroner, medical examiner, or other proper official "if the child dies suddenly or is found dead and if the cause of death is unknown." The section about which you inquire directs the justice of the peace, coroner, or medical examiner to "inform the child's legal guardian or parents that they may request an autopsy to be performed on the child and that the state will pay the reasonable costs of the autopsy." Health & Safety Code § 673.002(b). If the child's parents or legal guardian request an autopsy, the justice of the peace, coroner, or medical examiner is to arrange for the autopsy and notify the parents or legal guardian of the results. *Id.* § 673.002(c). Cost of the autopsy is reported to the commissioner, who is to instruct the comptroller of public accounts to pay the claim. *Id.* § 673.002(d). The commissioner is to determine "if a claim for the costs of an autopsy is reasonable and proper." *Id.* 673.002(e).

Chapter 673 (formerly V.T.C.S. article 4447e-2, sections 1-3) was added to the civil statutes in 1977 by Senate Bill 821. The caption at the beginning of Senate Bill 821 reads that it is "[a]n Act relating to autopsies on children who die suddenly and unexpectedly; recognizing the term "Sudden Infant Death Syndrome" as a cause of death certification when appropriate; directing the Texas Department of Health . . . to develop a program outline for consultation and information about "SIDS"; . . ." See Act of May 19, 1977, 65th Leg., R.S., ch. 462, 1977 Tex. Gen. Laws 1196, 1196. Section 673.004 of the Health and Safety Code directs the Texas Department of Health ("the department") to "develop a model program that can be used to provide information and follow-up

consultation about sudden infant death syndrome and its characteristic grief-guilt reaction. The program should humanize and maximize understanding and the handling of sudden infant death syndrome in this state.” The department is to distribute this program to proper agencies, governmental bodies, officials, physicians, nurses, health professionals, and citizens. *Id.* § 673.004(b). The department is also authorized to appoint an advisory committee to provide assistance in developing the program. *Id.* § 673.004(c).

Chapter 673 of the Health and Safety Code appears to have been added to the code in order to recognize “sudden infant death syndrome” as the cause of death of numerous children under the age of two years, to find a way to comfort parents and legal guardians by establishing the cause of the death through an autopsy paid for by the state, and to provide information and consultation to parents in dealing with their grief and guilt upon the death of a child.

Chapter 264, subchapter F of the Family Code addresses the subject of child fatality review and investigation. A person who knows of the death of a child *younger than six years of age* is to immediately report the death to the medical examiner of the county in which the death occurs or, if there is no medical examiner in the county, to a justice of the peace in that county. Fam. Code § 264.513(a). The medical examiner or justice of the peace is directed to hold an inquest under chapter 49, Code of Criminal Procedure, to determine whether the death was unexpected or the result of abuse or neglect, *id.* § 264.514(a), and to notify the appropriate local law enforcement agency if the death is determined to be unexpected. That agency is directed to investigate the child’s death. *Id.* § 264.514(b). The investigation required by section 264.514 must include an autopsy. *Id.* § 264.515(a)(1). Article 49.10 of the Code of Criminal Procedure was amended in 1995¹ and again in 1997² to conform with the Family Code in requiring that an autopsy be performed if the deceased is a child younger than six years of age and the death is determined under section 264.514, Family Code, to be unexpected.³ *See* Code Crim. Proc. art. 49.10(e). Under the Code of Criminal Procedure, the commissioners court is directed to pay a reasonable fee to a physician performing the autopsy on the order of the justice of the peace, if a fee is assessed. *See id.* art. 49.10(g).

To clarify matters, we will consider how the two statutes differ. The Health and Safety Code directs that the death of *a child younger than two years old* be immediately reported to the justice of the peace, medical examiner, coroner, or other proper official if the child dies suddenly or is found dead and if the cause of death is unknown. The Family Code directs that the death of *a child younger than six years old* be immediately reported to the medical examiner or to a justice of the peace, except that reporting is not required if death is the result of a motor vehicle accident. The

¹*See* Act of May 16, 1995, 74th Leg., R.S., ch. 255, 1995 Tex. Gen. Laws 2182, 2189; Act of May 27, 1995, 74th Leg., R.S., ch. 878, 1995 Tex. Gen. Laws 4367, 4373.

²*See* Act of May 26, 1997, 75th Leg., R.S., ch. 1301, 1997 Tex. Gen. Laws 4953, 4954.

³Section 264.501(12) of the Family Code defines “unexpected death” to include “a death of a child that, before investigation . . . appears to have occurred without anticipation or forewarning, and . . . was caused by trauma, suspicious or obscure circumstances, sudden infant death syndrome, abuse or neglect, or an unknown cause.”

Health and Safety Code directs a justice of the peace, a coroner, or medical examiner to inform the parents or legal guardian of *a child younger than two years old* who “dies suddenly or is found dead and if the cause of death is unknown” that they *may request* an autopsy and the reasonable costs of the autopsy will be paid by the state. The Family Code, by contrast, directs that the medical examiner or justice of the peace hold an inquest under chapter 49 of the Code of Criminal Procedure, and notify the appropriate law enforcement agency if the death of *a child younger than six years old* is determined to be unexpected, and that agency is to investigate the child’s death. This investigation *must include* an autopsy. Fam. Code § 264.515(a)(1). The commissioners court of the county is to pay the reasonable costs of the autopsy. Code Crim. Proc. art. 49.10(g).

If statutes enacted at the same or different sessions of the legislature are irreconcilable, the statute latest in date of enactment prevails. *See* Gov’t Code § 311.025. These statutes are irreconcilable, and therefore, Family Code chapter 264, as the later enactment, prevails. Children younger than two years old who die suddenly of an unknown cause would be included within the scope of Family Code chapter 264, and an autopsy would be required in the course of the death investigation.

S U M M A R Y

The obligation of the commissioner of health to review and authorize payment of claims for the reasonable and proper cost of autopsies conducted pursuant to Health and Safety Code section 673.002 has been superseded by Family Code, chapter 264. Children younger than two years old who die suddenly of an unknown cause would be included within the scope of Family Code chapter 264, and an autopsy would be required in the course of the death investigation.

Yours very truly,



Sarah J. Shirley
Chair, Opinion Committee