

# MAINE STATE LEGISLATURE

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*Nursing Homes Certification of Deaths  
Death Certificates  
22 M.R.S.A. 2842(2)*

2/14/76

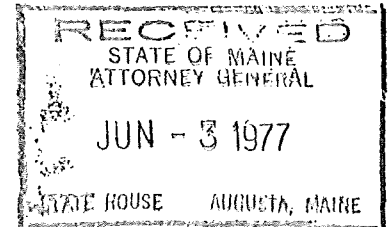
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June 1, 1977



Trish Riley, Staff Director  
Maine Committee On Aging  
State House  
Augusta, Maine 04333

RE: L.D. 1416 - An Act to Clarify Physician Certification  
of Patient Deaths in Maine Nursing Homes

Dear Ms. Riley:

The facts relative to the above-mentioned legislation are as follows: If a nursing home patient in Maine dies without a physician being present, it is common practice for the staff to notify the patient's attending physician by phone that all vital functions have ceased. The doctor, without viewing the body, will then orally verify that the patient has died, based on the representations of the caller. The physician is required, pursuant to 22 M.R.S.A. 2842(2), to certify the cause of death within 24 hours. He is not required to actually view the body prior to completing the death certificate. Oftentimes, the body will be removed by a funeral director before the death certificate is completed. The District Attorney's Office for Kennebec and Somerset Counties, in a report dated July 26, 1976 and entitled "Report on Procedures Following Deaths in Nursing Homes in Kennebec-Somerset Counties," felt that the foregoing procedure is too lax and should be corrected through legislation which would require the physician to actually view the body prior to signing the death certificate. In apparent response to this report, and with the cooperation of the Maine Committee on Aging, Senators Snowe and Pierce have referred L.D. 1416, AN ACT to Clarify Physician Certification of Patient Deaths in Maine Nursing Homes, to the Committee on Health and Institutional Services of the 108th Legislature. The statement of fact for this bill reads in part as follows:

"This bill stipulates that a physician in charge of patient's care must examine the body of a deceased nursing home resident before certifying the cause of death, except in instances where the resident had been examined by the physician within 48 hours prior to death..."

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The issue has arisen as to whether these postmortem examinations will be paid for with the aid of Federal funds in the case of a patient who was receiving Medicaid Assistance. Alfred G. Fuoroli, Associate Regional Commissioner for Medical Services of the Boston Office of HEW, indicated in a letter dated March 30, 1977, to Kathleen Goodwin that Federal financial participation would be available if the person were not considered legally dead until such time as the death certificate is signed by the attending physician.

The question then is whether a person in Maine is legally dead prior to a physician signing the death certificate.

The answer to this question is yes. A person is considered legally dead at the time the vital functions cease, not at the time the death certificate is completed.

This conclusion is based on the following reasoning. An attending physician cannot possibly be present at the instant of death of each and every patient. The approximate time of death is usually noted by another professional who is qualified to detect and record vital signs. Pursuant to 22 M.R.S.A. 2842(2), the doctor need not fill out the death certificate until as long as 24 hours after a patient has expired. In completing the death certificate, the physician is certifying the cause of death and not the exact time. Indeed, there are portions of the death certificate form, numbers 21b, 21c, 21d, and 21e, which infer that "death" has or may have occurred before the physician completed the certificate. Further, there is no existing statute in Maine, nor is there any case law, which specifically defines the time of "legal death." However, there are several statutes, e.g., 22 M.R.S.A. 3026, 3027, 3029, and 2842(2) and (3), which refer to "death" occurring without a doctor being present, i.e., inferring that a person can be considered legally dead before the death certificate is completed.

Very truly yours,



Thomas E. Coyer  
Assistant Attorney General

TEG:bjw

cc: Senator Olympia J. Snowe  
Senator Richard H. Pierce