

PEACEFUL PASSAGE AT HOME
Caring for our own after death

Introduction to the law

In Massachusetts, as in all states, it is entirely legal to take care of your loved one in your home after they die. Most home funeral families have a vigil for one to three days. In Massachusetts there is a law that a person cannot be cremated until 48 hours after death. Rather than pay to have your loved one at a funeral home or crematory, this is the perfect time to have a vigil in the home.

MA and 40 other states allow families to do the paperwork and transport their loved one to final disposition, that is, to a crematory or cemetery. In nine “restrictive” states — CT, IL, IA, IN, LA, NY, MI, NE, NJ — laws have been enacted that prohibit families from carrying out these tasks. For more information, see this white paper on the National Home Funeral Alliance site:

http://homefuneralalliance.org/wp-content/uploads/2015/04/Restoring-Families_Rights-to-Choose-Final.pdf

Since this old tradition is, in modern days, still fairly new, most state, city, and town officials and institutions (hospitals, nursing homes) have yet to experience a family wanting to hold a home funeral. Their lack of knowledge sometimes requires families and advocates to educate those with whom they need to work.

It is vital that, when possible, a family member or advocate inform any officials (hospice, hospital, primary care doctor, etc.) before the death about the family’s plans to hold a home funeral.

Important documents to have when approaching officials or policymakers

- A copy of the actual law:

<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter46/Section9>

- A copy of the Executive Office of Health and Human Services “Issues to Consider in Preparing for Disposition of Decedents,” which explains what families need to do:

<http://www.mass.gov/eohhs/gov/departments/dph/programs/environmental-health/comm-sanitation/burial-and-cremation.html>

Guidelines for various situations: the legal process in MA

A helpful phrase for a family member to use when you are talking to any “official” to arrange a home vigil is to say that you are “acting as the funeral director.”

Expected death at home

If the death is expected and you have hospice there is no need to call an ambulance, police, or 911. The hospice nurse will come at the time of death, sign a Nurse Pronouncement Form, and give it to the family. This form states the time of death and will be given to the doctor or the Town Clerk to be input into the electronic system as part of the death registration process.

Unexpected death at home

If the death is not expected, you will need to call the police who will then be in contact with the medical examiner. You may call the non-emergency number of the police department and explain the situation. Each town may respond differently. Some may treat the home as a “crime” scene for a short while. Others choose not to go that route. All will do some type of investigation. Call your primary care physician as soon as possible to inform her or him of the circumstances and ask them to help by giving appropriate information to the authorities (police and/or medical examiner) as quickly as possible.

Expected death away from home

Usually an expected death will take place at a hospital, a hospice facility, or a nursing home. In these cases it is best to pre-plan with the attending physician, social workers involved in discharge planning, and hospital administrators. In most states you will be able to transport your loved one after having the correct paperwork filled out. You may also choose, with pre-planning, to have a funeral director bring your loved one home.

Unexpected death away from home

If an unexpected death occurs and you want to act as your own funeral director, then you must know your rights in order to take custody of the body. If there is to be an autopsy you will have a chance of preventing it if you voice religious objections. The body will often be taken to a morgue until plans are made.

Be prepared with a clear understanding of your state laws and regulations. If the death occurs in another state, you can get quickly up to speed on applicable laws at the site of the Funeral Ethics Organization, <http://www.funeralethics.org>. Lisa Carlson, who runs the site, is knowledgeable about the various state laws and will answer questions by phone or email (802-482-6021, info@funeralethics.org).

Work with the signing physician or hospital staff. Most people are familiar with procedures involving a funeral director and will generally work with you if you are informed, determined, and can produce the proper paperwork that is needed. However, some hos-

pital and care facility staff may not have any experience with families wanting to take the body home. Their first response may be “It can’t be done.” Check out this link if you are confronted with institutional obstacles:

<http://homefuneralalliance.org/the-law/nhfa-fca-legal-obstacles/what-to-do-when-rights-are-challenged/>

Take a good friend along for support. If you know a sympathetic funeral director, his or her services may be useful in clearing administrative obstacles to taking possession of the body and in organizing and bringing your paperwork.

Paperwork step-by-step

Since this system is still new for most town officials each office may need time to learn their part of the process and it may be slightly different in various places. Patience and persistence are needed.

MA has recently instituted an Electronic Death Registration System (EDRS), as have many other states. Since it is so recent in MA, there are two parallel tracks to accommodate the transition time: one for physicians (online) who are familiar with and have access to the EDR system, and the other track for physicians (offline) who have not yet signed on.

Track One: online

This track is for the physician who must certify the cause of death and *is* part of the EDR system, and can input the proper information electronically. That can be the Primary Care Physician, an oncology doctor, the hospice Medical Director, nursing home medical doctor, medical examiner etc.

When the family, hospice, medical facility, or other official contacts the Town Clerk in the town where the death occurred, that Town Clerk can directly access the information.

The family provides the Town Clerk with very specific biographical information which the Town Clerk will enter as part of the record for the death certificate. A form called the “Informant Worksheet for Certification of Death” has been created to help families with providing this information.

<http://www.mass.gov/eohhs/docs/dph/vital-records/informantworksheetsparta.pdf>

After the Town Clerk inputs all the data, she/he then downloads and gives the Burial / Transport Permit to the family member, allowing them to legally transport their loved one to the crematory or cemetery.

Track 2: offline

In this case the attending physician *is not* part of the EDR system, and so a paper process

will begin. The doctor will give the family a “Death Certificate Medical Certifier Worksheet” (formerly called the death certificate).

<http://www.mass.gov/eohhs/docs/dph/vital-records/vip-medical-certifier-worksheet.pdf>

That document plus the “Informant Worksheet for Certificate of Death” linked above must be filled out by the family and taken to the Town Clerk where the death occurred so that all the information may be entered into the EDR system. After entering the information the Town Clerk will give the family a Burial/Transport Permit.

The official death certificate is available after the death has been registered with the Town Clerk as described above. The family must apply for the death certificate through that same Town Clerk. A local fee of varying amount is required either by going directly to the Town Clerk or, in some cases, applying online.

Documents required by the crematory

Here are the five documents that you must give to the crematory if you are bringing the body there yourselves and doing the paperwork.

❖ *Death Certificate Fax Attestation*

Obtain this document from the Primary Care Doctor if the doctor is not in the Electronic Death Registration System (EDRS). If the doctor is in the EDRS, then he/she will enter the appropriate information electronically to be accessed by the town clerk.

Now a family member goes to the Town Clerk in the town where the death occurred. Take the Death Certificate Fax Attestation if the doctor gave you a paper copy. At the Town Clerk’s office the family fills out an “Informant Worksheet” so the Clerk has the necessary biographical information of the deceased to input into the electronic system. Then he/she will give you:

❖ *Burial/Transit Permit*

❖ *Death Certificate Attestation*

Meanwhile, the family obtains from the crematory:

❖ *Authority to Cremate*

The crematory may be able to tell you where to download a blank form online. Fill this out and have the next-of-kin sign it.

Finally, the crematory needs proof that the Medical Examiner’s fee has been paid:

❖ *Medical Examiner's Certificate*

Find out from the crematory the name of their medical examiner. Then go online to <http://www.paybill.com/cme-ma-cremations>, put in all the information, and pay \$100. You will get a receipt immediately by email with a number on it. Take that receipt with you to the crematory.

If you have any problems with this step, call Steven Lancaster at the Medical Examiner's Financial Office at 617-267-6767 x 2227. He is a wonderful and helpful man.

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