



**LEGAL SERVICES
FOR MAINE ELDERS**

LD 51 – An Act to Increase Oversight of Fatalities of and Serious Injuries to Adults Subject to Public Guardianship

Testimony of John Brautigam, Esq. for Legal Services for Maine Elders
Joint Standing Committee on Health and Human Services

February 4, 2025

Good afternoon, Senator Ingwersen, Representative Meyer, and members of the Joint Standing Committee on Health and Human Services.

My name is John Brautigam, and I am here today on behalf of Legal Services for Maine Elders. LSE provides free legal help for Mainers aged 60 and older when their basic human needs are at stake.

Under current law, when a person receiving home-based or community-based services dies or is seriously harmed, the circumstances may be reviewed by the Aging and Disability Mortality Review Panel. LD 51 would extend the work of the Aging and Disability Mortality Review Panel to include people in public guardianship even if they are not receiving HBCS.

LSE supports this change. People in guardianship are a special class, requiring special care and attention. The occurrence of an unusual death or serious injury of any person under guardianship provides an opportunity to assess what is working well and what may not be working in the guardianship program.

Currently, the Aging and Disability Mortality Review Panel only conducts a review when the person who dies or is injured is in Home and Community Based Services. There is likely an historical reason why the panel's review is focused on those receiving HCBS services. But the scope need not be limited. LD 51 sets up a more inclusive framework. Under the bill, the death or injury of any person under guardianship could be reviewed by the panel, even if the person is living in a nursing home or residential care setting, or if living in a personal residence without HCBS. This makes sense.

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Also, under 5 MRS § 200-H (see attached) the Office of Attorney General hosts the Maine Elder Death Analysis Review Team. The Committee may wish to consider whether there is value in reviewing the work of these two groups to ensure that they are in harmony.

We have not been able to determine how many deaths or injuries LD 51 would cover. We are not aware of any single report that compiles comprehensive records of guardianships or of how many people in public guardianship are not receiving HCBS. Despite the importance of the issues involved, there is a lot that I was not able to quantify.

Regardless of the protocol or the setting, the most important issue is what happens with the results of these reviews. Ultimately, the goal should be to identify opportunities for improvement and then implement those improvements with all the required resources.

We also welcome the appointment of additional members on the panel. Including a person from APS will help make sure the results of each investigation carry forward into improved approaches, where warranted.

My final thought is, let's not lose sight of the tragedy that is behind each and every preventable death or serious injury of a dependent adult. The least we can do to honor these individuals and their loved ones is to learn from that experience so that someone else will not have to suffer in the future.

Thank you.

Title 5: ADMINISTRATIVE PROCEDURES AND SERVICES
Part 1: STATE DEPARTMENTS
Chapter 9: ATTORNEY GENERAL

§200-H. Maine Elder Death Analysis Review Team

There is created, within the Office of the Attorney General, the Maine Elder Death Analysis Review Team, referred to in this section as "the team." [PL 2003, c. 433, §1 (NEW).]

1. Composition. The team is composed of 16 members as follows:

- A. The Chief Medical Examiner, ex officio; [PL 2003, c. 433, §1 (NEW).]
- B. The Director of Investigations for the Office of the Attorney General, ex officio; [PL 2003, c. 433, §1 (NEW).]
- C. The Director of the Division of Licensing and Regulatory Services within the Department of Health and Human Services, ex officio; [PL 2007, c. 324, §1 (AMD).]
- D. The Director of the Health Care Crimes Unit within the Office of the Attorney General, ex officio; [PL 2003, c. 433, §1 (NEW).]
- E. The Director of Aging Planning and Resources Development within the Department of Health and Human Services, Office of Elder and Adult Services, ex officio; [PL 2009, c. 149, §1 (AMD).]
- F. The Director of the Adult Protective Services program within the Department of Health and Human Services, Office of Elder and Adult Services, ex officio; [PL 2009, c. 149, §1 (AMD).]
- G. The Director of Adult Mental Health Services within the Department of Health and Human Services, ex officio; [PL 2003, c. 433, §1 (NEW); PL 2003, c. 689, Pt. B, §6 (REV).]
- H. The executive director of the long-term care ombudsman program, as established in Title 22, section 5106, subsection 11-C, ex officio; [PL 2003, c. 433, §1 (NEW).]
- H-1. A sexual assault nurse examiner within the Department of Health and Human Services; [PL 2015, c. 267, Pt. GG, §1 (AMD).]
- I. A representative of victim services, appointed by the Attorney General; [PL 2003, c. 433, §1 (NEW).]
- J. A commanding officer of the Criminal Investigation Division within the Department of Public Safety, Bureau of the State Police, appointed by the Attorney General; [PL 2003, c. 433, §1 (NEW).]
- K. A prosecutor, nominated by a statewide association of prosecutors and appointed by the Attorney General; [PL 2003, c. 433, §1 (NEW).]
- L. A police chief, nominated by a statewide association of chiefs of police and appointed by the Attorney General; [PL 2009, c. 149, §1 (AMD).]
- M. A sheriff, nominated by a statewide association of sheriffs and appointed by the Attorney General; [PL 2009, c. 149, §1 (AMD).]
- N. A physician, a geriatrician or a primary care physician who works in the area of elder care, nominated by a statewide association of physicians and appointed by the Attorney General; and [PL 2009, c. 149, §1 (NEW).]

O. An emergency medical services' person, nominated by a statewide association of emergency medical services professionals and appointed by the Attorney General. [PL 2009, c. 149, §1 (NEW).]

[PL 2015, c. 267, Pt. GG, §1 (AMD).]

2. Designees; terms of office. An ex officio member may appoint a designee to represent the ex officio member on the team. A designee, once appointed, qualifies as a full voting member of the team who may hold office and enjoy all the other rights and privileges of full membership on the team. All of the appointed members of the team serve for a term of 3 years. Any vacancy on the team must be filled in the same manner as the original appointment, but for the unexpired term.

[PL 2003, c. 433, §1 (NEW).]

3. Meetings; officers. The team shall meet at such time or times as may be reasonably necessary to carry out its duties, but it shall meet at least once in each calendar quarter at such place and time as the team determines, and it shall meet at the call of the chair. The Attorney General shall call the first meeting before January 1, 2004. The team shall organize initially and thereafter annually by electing a chair and a vice-chair from among its members. The vice-chair shall also serve as secretary.

[PL 2003, c. 433, §1 (NEW).]

4. Powers and duties. The team shall examine deaths and serious injuries associated with suspected abuse or neglect of elderly adults and vulnerable adults. The purpose of such examinations is to identify whether systems that have the responsibility to assist or protect victims were sufficient for the particular circumstances or whether such systems require adjustment or improvement. The team shall recommend methods of improving the system for protecting persons from abuse and neglect, including modifications of statutes, rules, training and policies and procedures.

[PL 2003, c. 433, §1 (NEW).]

5. Access to information and records. In any case subject to review by the team, upon oral or written request of the team, notwithstanding any other provision of law, any person that possesses information or records that are necessary and relevant to a team review shall as soon as practicable provide the team with the information and records. Persons disclosing or providing information or records upon request of the team are not criminally or civilly liable for disclosing or providing information or records in compliance with this subsection.

[PL 2003, c. 433, §1 (NEW).]

6. Confidentiality. The proceedings and records of the team are confidential and are not subject to subpoena, discovery or introduction into evidence in a civil or criminal action. The Office of the Attorney General shall disclose conclusions of the review team upon request, but may not disclose information, records or data that are otherwise classified as confidential.

[PL 2003, c. 433, §1 (NEW).]