

Can We Have a Funeral Service? A Legal, Business, and Ethical Answer for Deathcare Professionals

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The following is based on information available as of March 18, 2020.

This, by far, is the question that all deathcare providers are asking right now. The following answer is meant to guide funeral homes, cemeteries, and all other deathcare providers. While this is a national issue, there are no national mandates that directly answer the question. On the state level, there is some general guidance, but as of the time of this writing, there is no direct answer to the general question. The suggestions below are based on all the data and information that has been made available and also on recommendations from experts in deathcare. We welcome any input, and of course reserve the right to modify these recommendations as the situation evolves.

The short answer is that, as of now, deathcare providers can hold services for funerals; this includes funeral homes and cemeteries. However,

we are seeing more and more restrictions on what is allowed in the form of a service. Many states have imposed restrictions that limit gatherings to less than 50 people. Compare this to recommendation from the CDC as well the White House, which has gone from 50 people to 10 people. The CDC limitations of 10 people is a recommendation, not a mandate. Also, some states are now considering if deathcare providers may be exempt from any of these limitations on gatherings¹. Amidst all of the regulations, there is contradicting information that makes these decisions more difficult. Always make sure to follow the mandates from your state, as well as possible restrictions on the local level. Keep in mind that caring for the dead is an essential service that we provide to our communities.

It is important that any decision you make for your business that you do not violate any mandated restrictions. Make sure that you

¹ As of the time of this writing, New Mexico Ohio had released Orders from the Department of Health which provided further clarification to the 50-person limitation, and exempted, among other events, funerals from the COVID-19 mass gathering limitation of 50 or more persons in a single room. While this could help funeral professionals in conducting services, it raises other issues including the fact that CDC as well as states still recommends that less than 10 people or at any gathering as well as all individuals should practice social distancing, which is now 6 feet. Businesses need to consider their situation as well as the families they serve to make sure they are providing safe services. Keep in mind that businesses also need to consider the safety you can provide your employees.

follow your state guidelines - at a minimum. Please note that another common limitation some states are mandating is room capacity. This limitation places an additional restriction where room capacity must be half of the allowed normal capacity. In other words, if you have a room that only allows 30 people, you may have to limit that room to 15 people. Some states are acknowledging that outdoor activities are safer, but the limitation on number of people still exists. In addition to these restrictions, there are other closures that will affect services².

As a business decision, it is recommended that you make sure to follow guidelines and avoid over AND under precautions. For example, if you decide to hold a service that is beyond the number of suggested allowed individuals, you not only may risk potential liability, but you also run the risk of being in the spotlight for a violation. As a deathcare provider you do not want to be in the news for violating the limitations of gatherings.

On the other end of the spectrum, be cautious of over-limiting services and deciding that an easier option is to just say no to all services. While your business is free to adopt any safety precautions that you believe are acceptable, and justified, it is suggested that at this time deathcare providers still do everything in their ability to honor the requests of families and provide the services that are available. Keep in mind, that if your business gets to a point where it believes it cannot handle deceased or families safely, you need to stop. This could come about due to a lack of equipment - or possibly due to COVID-19 infections in your own

business. However, if we as deathcare providers take it upon ourselves to limit services beyond what the national and state recommendations are, we may find ourselves causing permanent damage to the services we provide.

While many providers offer 'traditional' services, meaning social gatherings, this may be the time as a profession to start looking at other options. As a provider you may want to consider making arrangements and offering services virtually. This does not necessarily mean expensive equipment; this could be using services such as Facebook live; or simply using your telephone. The point is that providers need to be thinking of answers now so that they can continue to provide services for families.

In regard to handling a funeral for someone who has died from COVID-19, there will most likely be further limitations. For deathcare providers, there may be limitations first as to how the deceased is handled. Some states are now suggesting that a death due to coronavirus must be cremated. This is early in the process, and we will monitor as states provide more information. However, the funeral of a coronavirus death will also be handled differently. In such a case, it is likely that all immediate family will be quarantined. This, in of itself, will change the funeral process. Again, in a coronavirus case, make sure to follow any and all state requirements, and also be prepared to work with state authorities in such cases.

Overall, deathcare providers can still provide services, the services will just need to be limited. We encourage all funeral providers to work

² At the time of this writing, many churches, including the Catholic Diocese, have cancelled all services/masses until Easter. Additionally, other religious groups and leaders are placing limitations on services including who may attend; this includes various synagogues that are limiting certain funeral practices. It is suggested that providers confirm with local churches to know what is and isn't allowed.

carefully, educated, and most importantly in the best interest of the families you serve. This means that your business should be following all safety protocols. Personal protective equipment, cleaning and disinfecting, as well as social distancing are the basis for safe working. Your business should make decisions based on guidelines that are provided and not rumors or fear. Lastly, our businesses are built on handling the deceased and their families, but in times like these it is important to make sure we are thinking of all families.



Poul Lemasters, Esq. began his career in deathcare more than 22 years ago as a funeral director and embalmer. He quickly recognized that the growing risk and liability in deathcare along with the lack of support and resources for those in this profession made for a deadly combination. Today, Poul uses his unique background in both deathcare and law to provide resources and counsel to other deathcare professionals. He gets calls for assistance in risk management, daily operational conflicts, form and contract reviews, valuations, and regulatory matters. Poul advises several funeral homes, crematories, cemeteries, and trade associations across the United States.