



Restoring Families' Right to Choose: *the call for funeral legislation change in America*

The Call for Change in Funeral Law

The Funeral Consumers Alliance (FCA) and the National Home Funeral Alliance (NHFA) stand together in the call for revision of all state laws and regulations that unreasonably impede a family's ability to care for their loved ones after death.

We believe in clarifying and restoring the rights of Americans regarding after death care, while providing for the necessary medical and public health safeguards. Together, the NHFA and the FCA are united in calling for all states to clearly articulate the rights of families to perform their own funeral rites without government required commercial businesses involved.

We ask all lawmakers and public officials to include a statement in their funeral, burial, and vital statistics laws that clearly states the rights of families to care for their own. We ask lawmakers and public officials in Connecticut, Illinois, Iowa, Indiana, Louisiana, Michigan, Nebraska, New York, and New Jersey, states where these rights have been compromised, to join us in restoring the rights of Americans to self-determination in funeral processes and practices.

This is not a partisan matter: Democrats, Republicans, Independents and those of every political creed deserve the right to choose. Neither is it a sectarian issue: Christians, Jews, Muslims, Buddhists, atheists, and adherents of all faiths or none deserve this right. This is a fundamentally American idea—that individuals, families, and households are best equipped to decide for themselves how to carry out the duties, joyous and sad, that we all will experience when a loved one dies.

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Restoring Family Rights in Nine States

Most states do not impose a legal requirement that compels citizens to patronize a commercial funeral home, but nine do. The ways in which state laws and regulations entangle families in forced commercial transactions are varied and inconsistent. The effect of these laws goes unnoticed until a family wants to take care of their loved one after death and meets resistance.

Connecticut—requires a funeral director’s signature on the death certificate and bars anyone but a funeral director or embalmer from removing a body or transporting it.

Illinois—defines “funeral director or person acting as such” to include only funeral directors and their employees, according to Illinois Administrative code.

Iowa—recently changed its law to disallow local registrars from being able to supply burial transit permits, thus forcing families to hire funeral directors or engage medical examiners to file for them.

Indiana—says burial permits can only be given to funeral directors, though other statutes clearly refer broadly to the “person in charge” of the disposition (e.g., the next-of-kin).

Louisiana—mandates funeral director involvement in obtaining all necessary permits and funeral director presence at the final disposition of the body. In plain terms, the state literally requires families to hire an undertaker to supervise them.

New York—has requirements similar to Louisiana’s.

Michigan—requires that death certificates be “certified” by a funeral director — though the statute doesn’t define what that means. Additionally, the wills and probate section of the law requires all body dispositions be conducted by a licensed funeral director.

Nebraska—law requires a funeral director to supervise all dispositions and gives funeral directors the right and authority to issue “transit permits” to move the body out of state.

New Jersey—requires a funeral director’s signature on the death certificate and mandates funeral director presence at the final disposition of the body.

In the nine states listed above, families lose the right to independent, private control of their affairs when a loved one dies. Few occasions are as trying or intimate for any family as a death; it’s especially unfortunate that families should be compelled to

engage in an expensive and unnecessary commercial transaction when death occurs. While it is true that a minority of Americans will choose a home funeral, and most will gladly rely on funeral directors, it is the *right to choose* that must be protected.

It is more than unfortunate when the state compels a citizen to hire a private business—at considerable cost—to perform something he can do for himself. Consider this: In all states, expectant mothers may have their babies at home; fathers may cut their children’s hair to avoid the expense of a barber; engaged couples may plan and carry out their own wedding without hiring professional planners or caterers; homeowners may snake their clogged drains to save on professional plumbing fees. And all Americans have the right to be cared for at home by their family as they near the end of life, where most people will agree they prefer to die. ¹

How Did We Get Here?

From colonial days until the nineteenth century, the American funeral was almost exclusively a family affair, in the sense that family and close friends performed most of the duties in connection with the dead body itself. It was they who washed and laid out the body, draped it in a winding sheet, and ordered the coffin from the local carpenter. It was they who carried the coffin on foot from the home to the church and then to the graveyard, and who frequently...dug the grave.

—from *The American Way of Death*, pp. 190, 199²

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It wasn’t until the Civil War and the ensuing trend toward professionalization in all spheres that families began to relinquish the care of their dead. In time, the emerging funeral industry’s practices and recommendations were accepted as the norm, and families lost touch with traditional methods and values, though many less affluent throughout the country continued to lay out their own in the parlor as late as the 1950s. With the exception of the nine states that deliberately block families, the ability to care for one’s own after death has continued.

Unfortunately most people do not know this is an option, including, at times, those in critical positions who should know, such as medical examiners, vital statistics staff, hospital personnel and others.

In recent years, a growing number of Americans have sought to return to these earlier customs, customs our great-grandparents would instantly recognize and consider a normal part of family life. Beth Knox, a home funeral advocate from Maryland, illustrates this through the telling of her daughter's tragic death in a car accident:

"She left suddenly at the age of seven. When the life support at the hospital was about to be removed, I was told that the hospital could only release her to a funeral home. I had given birth to her. She had lived with me every day of her life. I had carefully chosen what she was exposed to, what she ate, where she went to school. I was required by law to care well for her. But now that her heart had stopped beating, I was being told that her care was no longer my concern.

"As it turns out, the hospital was wrong. I had the legal right to care for my daughter, but I didn't find that out until later. In the meantime, I found a funeral home that was willing to "pick her up" but then bring her directly to our home. (I later found out that I had the right to transport her in the van in which I had driven her to school each day. I was not required by law to call a funeral home at all.) I cared for her at home for three days, bathing her, watching her, taking in slowly the painful reality that she had passed from this life, and sharing my grief with her classmates and brothers and grandparents and our wonderful community of friends, before finally letting go of her body."

Knox's story also illustrates an important point regarding legal requirements that did not exist in America's infancy. All deaths require filing of death certificates with each state's version of Vital Statistics. In order to move a body, a burial or transit permit is required. Some states have mandatory waiting periods prior to cremation. Crematories and cemeteries have policies that make carrying out family-led funeral plans difficult.

Both the FCA and the NHFA seek to promote compliance with reasonable laws and regulations. However, we also contend that it is the role of government to assist citizens by passing fair legislation that enables them to fulfill these responsibilities with relative ease while ensuring compliance with vital statistics and recording laws.

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The Costs Involved

Whether a death was expected or not, vulnerable families face enough grief without the potential pressure of making financial or other decisions quickly. Home funeral proponents advocate for family involvement with their loved ones' physical care at home as a matter of spiritual and emotional healing.

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In practical terms, taking time with their loved one allows family and community to gather and experience their loss together, which may result in clearer thinking, particularly when faced with expensive funeral arrangements. A funeral has the potential to be one of the most expensive purchases a family ever makes aside from a house, a car, or a college education. A full-service conventional funeral costs more than \$7,000, not counting cemetery or other fees which often raise the price tag to well over \$10,000.³ Even a lower-priced direct cremation at \$1,500 is out of the reach of many Americans.

By contrast, a household willing to file the correct paperwork and transport the deceased to the crematory themselves can spend less than \$400 including cremation. With historically high levels of poverty and unemployment, Americans willing to be self-sufficient when a death occurs should not be prevented from doing so by laws that compel them to spend money they don't have.

Safeguards Already Exist

While we don't believe medical staff or state employees such as vital statistics staff deliberately set out to thwart families' wishes at a time of death, their resistance or outright refusal to allow families a home funeral may result in undue suffering. No parent—no grieving person—should face bureaucratic resistance, legal hurdles, or a self-interested commercial industry when carrying out this sad final duty.

The basic legal requirements for the certification and recording of deaths are similar nationwide. They are designed to ensure that deaths are certified by medical professionals, both for the detection of foul play and for accurate health and disease information, and to ensure that the body is buried, cremated, or donated to anatomical

science within a reasonable period. While the particulars vary (e.g., some states require disposition of the body within a certain number of days, some don't), these basics are universal.

In most cases, the only things that are required at death are a properly completed and filed death certificate, a permit for disposition, and the body's actual disposition. Ceremonies, caskets, obituaries and, in most cases, embalming, are options left to the consumer's discretion, not requirements of the law.

Once the doctor or medical examiner has signed the certificate, the state's medico-legal interest in the death has been satisfied. It is the doctor or medical examiner, not a funeral director, who determines cause of death and who investigates if there is suspicion of crime or public health risk.

"...there simply is no measurable risk of that body transmitting an infectious disease agent. The use of embalming is of no consequence in reducing this risk. . ."

The myth of alleged public health risks from dead or unembalmed bodies is at the heart of a studied and disingenuous effort to influence legislation that backhandedly disempowers families. According to Dr. Michael Osterholm of the Center for Infectious Disease Policy and Research, *"...the mere presence of a dead body without regard to its embalmed status and one that is not leaking blood from an open wound or perforation, does not pose any increased risk of infectious disease transmission for the person who might handle that body or review it in a private setting. Once a human dies, infectious agents that would be of any concern, including those on the individual's skin or internal organs, is greatly diminished... there simply is no measurable risk of that body transmitting an infectious disease agent. The use of embalming is of no consequence in reducing this risk. . ."*⁴

Funeral directors have no forensic legal role in any death. Their function, when hired by families, is to complete the non-medical portion of the death certificate and to file it with the municipal registrar. It is important to note that it is the family who supplies the biographical information on the decedent; the funeral director merely transcribes the data.

Once the death certificate is filed, the registrar will issue a burial/transit or cremation permit in most states. Completing this paperwork requires no special skills or

knowledge, and there is no legitimate legal or practical reason why the next-of-kin cannot do so. Mothers who give birth at home, for example, may in every state complete and file a birth certificate.

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Yet eight of nine restrictive states permit only funeral directors to complete some or all of these tasks, establishing a *de facto* legal obligation to hire a funeral home. Even if the law does not explicitly state this, such wording is routinely interpreted by officials to prevent anyone but licensed commercial funeral directors from engaging in necessary tasks.

A reasonable interpretation of legislative intent was that lawmakers wished to make it clear that commercial funeral businesses have certain responsibilities to the state’s recordkeeping and to consumers, and that anyone offering funeral services for sale to the public must be properly licensed. It is highly unlikely that lawmakers intended to compel families to hire funeral homes or to make necessary administrative activities regarding death off-limits, but that is indeed how such laws are interpreted.

Clarifying Rights in All States

We believe it is time to clarify that families have the right to care for their loved ones after death, to secure these rights in all states, and to restore these rights in the nine states that deny them.

Each of the 41 states that allow families the right to care for their own dead have found their way to retaining citizens’ fundamental rights and responsibilities while ensuring compliance with standard medical and statistical recording of deaths. However, without explicit protection, these rights could be at risk from small changes in legal definitions.

And so we offer the following language for adoption or adaptation by all states:

Nothing contained in this section/title shall be construed to prohibit the next-of-kin or designee(s) from carrying out the disposition and funeral services of the decedent privately and without hiring a funeral establishment. Such kin and designees shall not be required to be licensed funeral directors in order to carry out the tasks associated with the disposition,

including but not limited to, preparing, filing and obtaining necessary certifications and permits, preparation of the body (not including embalming), transport of the body to the place of final disposition, and any desired ceremonies. No agency or department may promulgate any regulation that interferes with these rights and abilities except in cases of demonstrated and immediate threats to public health or safety. No agency or department shall refuse to furnish necessary authorizations to the next-of-kin or designee(s) provided those designees correctly supply information and/or paperwork that satisfies the laws of this state. Nor shall any agency or department require the family to hire or otherwise engage a commercial funeral establishment to accomplish such tasks.

Some examples of appropriate language currently used by forward-thinking states include: families *acting as their own funeral director*, families having the ability to *appoint designated agents*, to allow arrangements to be carried out by *any duly authorized representative*, or by *the person in charge*, and *the funeral director or person acting as such*.

“Each of the 41 states that allow families the right to care for their own dead have found their way to retaining citizens’ fundamental rights and responsibilities regarding care and custody while safeguarding necessary reporting, health regulations, and disposition requirements.”

How We Can Help

Elected legislators cannot be experts in all the subjects with which they must deal, and they understandably turn to the purported professionals for advice in crafting laws. Without a countervailing opinion from outside the commercial funeral industry, lawmakers are often misled by funeral trade groups about the “necessity” of enacting anti-consumer restrictions. These are not presented as such, naturally; they are cloaked in the language of “protecting the public health”, a misleading and unfounded argument.^{4,5}

A varied base of interested and informed sources should inform all good legislation in order to see the issues through different lenses. We ask that you seek the involvement of members of the FCA and NHFA in drafting amendments to laws and regulations that obstruct the right to home funerals.

Funeral Consumers Alliance Director Joshua Slocum and Funeral Ethics Organization Director Lisa Carlson are co-authors of the only book on funeral law for consumers state-by-state, *Final Rights: Reclaiming the American Way of Death*.⁶ Both are intimately familiar with such laws and can offer states amendments that would clarify these rights and put conflicting statutes in harmony.

The National Home Funeral Alliance counts members from all over the country with years of practical experience helping educate and support home funeral families who can offer lawmakers valuable testimony and advice.

In Conclusion

It is our fervent wish that legislators and policymakers across the country broaden their frame of reference and work to create funeral laws that empower families to make informed choices regarding compassionate and reasonable care of their deceased, without compelling commercial transactions, and without legal prejudice.

About the Funeral Consumers Alliance

The Funeral Consumers Alliance is a nonprofit dedicated to protecting funeral consumers' rights nationwide through education and advocacy. Members nationwide believe in freedom of choice in funeral matters, and in protecting the rights of Americans to choose not to be consumers at all and to avoid both cultural and commercial pressures to conform to the "new normal" of completing a business transaction with the funeral industry, which many are hard pressed to afford. To learn more, go to www.funerals.org Funeral Consumers Alliance, 33 Patchen Road, South Burlington, VT 05403, 802.865.8300

About the National Home Funeral Alliance

The National Home Funeral Alliance is a group of educators and advocates whose mission is to support and educate the public to the innate rights of families and communities to choose to have a non-commercial, family-directed funeral. Members also share knowledge of the funeral process with individuals and groups, and are active in their communities promoting environmentally and culturally sensitive methods of caring for the dead. They have witnessed hundreds of home funerals and can attest to the value to families and society that this choice provides. To learn more, go to www.homefuneralalliance.org National Home Funeral Alliance, 11014 19th Ave SE, Ste #8, PMB #155, Everett, WA 98208

¹Guengerich, Terri, "Caregiving and End of Life Issues: A Survey of AARP Members in Florida," AARP Knowledge Management, February, 2009, http://assets.aarp.org/rgcenter/il/fl_eol_08.pdf

²Mitford, Jessica, *The American Way of Death*. Cutchogue NY: Buccaneer Books, 1963.

³National Funeral Directors Association 2007 General Price List Survey: <http://www.nfda.org/news-a-events/all-press-releases/1219.html>. Accessed 8.31.2001.

⁴ Dr. Osterholm's complete testimony can be accessed at http://www.funerals.org/faq/pdf-pamphlets/doc_download/217-dr-osterholm-letter-on-embalming-and-public-health-2009. Additional scientific information on the lack of health risk from the dead is collected in Funeral Consumers Alliance's white paper, "Dead Bodies and Disease: The Danger That Does Not Exist" at <http://www.funerals.org/faq/142-embalming-myths-facts>.

⁵For more information on funeral-related health risks, go to http://www.funerals.org/faq/pdf-pamphlets/doc_download/217-dr-osterholm-letter-on-embalming-and-public-health-2009 and "Dead Bodies and Disease: The Danger That Does Not Exist" at <http://www.funerals.org/faq/142-embalming-myths-facts>.

⁶Joshua Slocum and Lisa Carlson, *Final Rights: Reclaiming the American Way of Death*. Hinesburg VT: Upper Access, Inc., 2011.

TESTIMONIALS

The following are brief descriptions compiled by NHFA home funeral educators across the US illustrating the benefits of family and community led after-death care:

“A woman in her early 60s was cared for by her circle of friends. She was part of an all-woman community and although she had no family, her friends cared for her. After an at-home vigil she was covered in her grandmother’s quilt and strapped to a carrying board with long pieces of sheet to a local green cemetery where the women lowered her body into the grave. The caring and completion of the intimate process was powerful for all involved.”

—DB, Texas

“A dedicated group of friends cared for A during her brief illness and were present at her death. She was clear that she wanted to remain in her home for three days after her death. Her family members were supportive of her desire to have a home vigil and deeply grateful to her friends for their guidance in washing, dressing and blessing her body, preparing the house for the vigil, moving her from the bed to the casket and using Techni-ice to keep the body cold. A vigil was kept round the clock by close friends and family members. During certain hours of the day the home was open for friends and associates to view her body, sign a guest book and offer condolences. On the morning of the third day, mementos were added to the casket and the cover put into place. As her body was being carried to a waiting van, several community members who had gathered outside the house were singing hymns. A’s father and two of her friends accompanied the body to the crematory. I can’t imagine doing this any other way.”

—KD, Wisconsin

“Hal passed away in the hospital, and with the help of a funeral arranger we took his body back to Kathy’s house. Kathy gently bathed and dressed him in clothes that his grandson Ryan picked out. We laid him on a massage table and covered him with the family quilt that his grandmother had made, the one he took on his over night fishing trips. Ryan put his grandfather’s favorite hat, lures and fishing poles beside him and made a sign, “Gone Fishin’”. We lit candles, played his favorite song, “So Long, It’s Been Good to Know Ya” and people began arriving to pay tribute and to decorate the cremation box. For the next two days, the house was filled with Hal’s neighbors, fishing buddies and friends. His grandson Ryan never left his side. In a very unique, and special way, they had their last fishing trip together. Ryan thought it would be really hard to see his Grandpa dead, but he surprised himself. He loved taking care of him. It was like his final gift to the man who meant so much to him. He got to give back. It was really healing for him. He’s okay now. He feels he did everything he could, and now he can say goodbye.”

—OB, California

“I received a call from a woman in the northern part of the state looking for information about how to bury her father on his own property after holding a home vigil. Fortunately, it is legal to do both here in New Hampshire, and the process, though eye-opening for many local officials, worked perfectly. Friends, relatives, neighbors, the people in the town office, and even the visiting hospice nurses all

reacted with a combination of shock, worry, and skepticism upon first hearing that she planned to bury her father on his own land, in a pine box, without involving a funeral home, but they gradually came to embrace the idea. Her father was well-known in the community, and the support was undoubtedly gratifying for the family."

—LW, New Hampshire

When PBS aired a groundbreaking documentary on home funerals in 2004, e-mails and phone calls flooded in to the Funeral Consumers Alliance. *A Family Undertaking* awoke viewers around the country to a different way of doing funerals that many Americans incorrectly believe is illegal or "weird." The following are excerpts from letters typical of what arrived at the FCA office:

"No one knows that they have a right to care for their own dead. This woman in the film said the nurses approached her after her daughter died and suggested they call the funeral home. I cannot imagine having the strength to argue with the medical profession about whether or not I can or cannot take my deceased child home or not at a time of extreme emotional upheaval. Where did the [hospital] get the idea to refuse to let her take her daughter? God bless her for speaking so candidly about her experience and being such an advocate."

"I was so moved by this documentary. I wasn't aware we had this option and I just wish my friends who lost their 19-year-old son last year after an auto crash had seen this program. The young man's funeral was very difficult and his little brother, only age 10, had a very hard time accepting the death, even with the body on display in the funeral home all night as hundreds of teens walked by for the viewing. If his older brother's body could have been at home for a few days, maybe the younger boy would have understood that his brother was not going to wake up again."

"I was comforted by this program since my father just passed away this past Sunday, at 9 p.m. We were allowed to remain with him as other family members arrived to say goodbye. We spent about two hours sitting with him, giving him our last kisses and holding his hand. It was odd at first because this was the first time I had ever seen a deceased person outside of a casket. But, the program said it best. You are able to cope and realize that yes, he has gone from his body and my belief is that he is now with Christ in heaven. He was a great man, one of the best dads you could possibly have. I was able to say goodbye many times before we left. And I am at peace knowing he is now at peace."

"My one-and-a-half year-old son died less than one year ago. When I asked to help clean him up at the hospital, they said no. When I asked to see him at the funeral home before he was dressed, they said no. I would have loved to have his viewing at home instead of at the funeral home, but I didn't know I could. The biggest problem I face in my grief today is that I didn't get enough time to say goodbye. I still look for him. His death was so sudden. Thank you for showing this film. If I had only seen it a year ago, my son's funeral would have been very different."