

Legal Brief

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Documentation of Deaths and Burials

This Legal Brief was drafted for general informational purposes only. It is not meant to be a comprehensive guide, nor should it be construed as legal advice. The information in this brief is current as of July 1, 2019; readers should consult the most recent versions of referenced statutes, regulations, and cases to ensure there have been no material changes.

Summary

The physician or other healthcare provider last in attendance to any person whose death occurs in South Dakota must, within five (5) business days thereafter, complete, sign, and file with the South Dakota Department of Health the medical certificate portion of the death certificate required by the Department. When death occurs without the attendance of a healthcare provider, the funeral director or other person in charge of the body must notify the county coroner, who then has responsibility for making the medical certificate, and in some circumstances, conducting an investigation into the death. A permit is required for burial, removal, or other disposition of the body of the deceased person. The reporting and permitting process may be handled electronically through the Department of Health. Unless good cause is shown, a person in charge of a body who fails to notify the county coroner and sheriff of the death within 48 hours following the death is guilty of a Class 2 misdemeanor.

Discussion

South Dakota law provides that any individual who has sustained either irreversible cessation of circulatory and respiratory functions or irreversible cessation of all functions of the entire brain, including the brain stem, is dead. A determination of death shall be made in accordance with accepted medical standards. SDCL 34-25-18.1.

The licensed physician, physician assistant, or nurse practitioner, if any, last in attendance on any person whose death occurs in South Dakota must complete, sign, and file with the South Dakota Department of Health the medical certificate portion of the form of certificate of death required by the Department. The medical certificate must be filed within five (5) business days of the death. SDCL 34-25-18.

The medical certificate must include a definite cause of death, “not just symptoms of disease or conditions resulting from disease or injury.” ARSD 44:09:01:05. If the place of death is unknown, a death certificate shall indicate the place of death as the location in which a dead body is found. If death occurs in a moving conveyance, a death certificate shall indicate the place of death as the location where the body was first removed from the conveyance.

If a death occurs without the attendance of a licensed physician, physician assistant, or nurse practitioner, the person in charge of the body must notify the county coroner and sheriff. Upon notification, the county coroner shall complete the medical certificate from the statement of relatives or other persons having adequate knowledge of the facts. The coroner, or deputy coroner in the absence of the coroner, shall complete, sign, and file the medical certificate with the Department of Health within five (5) days of the date of death, unless an autopsy or investigation is pending, in which case the pending autopsy or investigation shall be noted on the medical certificate. In the absence of a coroner or deputy coroner,

or if the coroner is unable to act, and only in such case, the county Register of Deeds shall prepare the medical certificate from the statement of relatives or other person having knowledge of the facts. SDCL 34-25-21.

Pursuant to SDCL 34-25-21, unless good cause is shown, a person in charge of a body who fails to notify the county coroner and sheriff of the death within 48 hours following the death is guilty of a Class 2 misdemeanor.

A fetal death report of the death of a fetus which has attained a gestational age of not less than twenty (20) completed weeks, which is not an abortion and reportable as such under South Dakota law, and which occurs in South Dakota, must be filed with the Department of Health. The physician or other medical provider in attendance at or after the delivery must file the report of fetal death to the Department of Health within seven (7) days of delivery. If there is no physician or other medical provider in attendance, the coroner shall complete and file the report within twenty-four (24) hours after taking charge of the case. SDCL 34-25-32.1.

Pursuant to SDCL 34-25-32.9, any person who is required to file a fetal death report as described above must advise the parent or parents of a stillborn child:

1. That a parent may, but is not required to, request a certificate of birth resulting in stillbirth by contacting the Department of Health to request the certificate and paying the required fee; and
2. The means by which a parent may contact the Department of Health to request the certificate.

South Dakota law (SDCL 23-14-18) requires the county coroner to investigate any human death if a determination of the cause and manner of death is in the public interest. Deaths which the coroner is required to investigate include, but are not limited to:

1. All deaths by unnatural means or if there is a suspicion of unnatural means, including all deaths of accidental, homicidal, suicidal, and undetermined manner, regardless of suspected criminal involvement in the death;
2. All deaths where the identity of the victim is unknown or the body is unclaimed;
3. All deaths of inmates of any state, county, or municipally operated correctional facility, mental institution, or special school;
4. All deaths believed to represent a public health hazard;
5. At the discretion of the coroner, all deaths of children under two (2) years of age resulting from an unknown cause or if the circumstances surrounding the death indicate that sudden infant death syndrome may be the cause of death; and
6. All natural deaths if the decedent is not under the care of a physician, physician's assistant, or nurse practitioner, or if the decedent's physician, physician's assistant, or nurse practitioner does not feel qualified to sign the medical certificate portion of the death certificate. However, the lack of an attending physician may not be construed to require an investigation or autopsy solely because the decedent was under treatment by prayer or spiritual means alone in accordance with the tenets and practices of a recognized church or religious denomination.

The coroner is also required to take or cause the taking of blood samples for toxicology testing if the death appears to have occurred violently, as the result of suicide, or as the result of an accident. SDCL 34-25-22.1.

Any person who has reasonable cause to suspect that a child has died as a result of child abuse or neglect, as defined in SDCL 26-8A-2, shall report that information to the medical examiner or coroner. Upon receipt of the report, the medical examiner or coroner shall cause an investigation to be made and submit written findings to the state's attorney and the Department of Social Services. Any person required to report under this section who knowingly and intentionally fails to make a report is guilty of a Class 1 misdemeanor.

The body of a person whose death occurs in South Dakota, or whose body is found in South Dakota, or of a fetus of twenty (20) weeks gestation or more, may not be finally disposed of or removed from the state unless a permit for burial, removal, or other disposition has been issued electronically by the South Dakota Department of Health or on paper by the county register of deeds. SDCL 34-25-34.

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The reporting and permitting process may be handled electronically through the Department of Health, but the provider must first register and obtain a password. The provider may contact the Office of Vital Records at 605-773-4961 for information concerning how to register.

Conclusion

The physician or other healthcare provider last in attendance to any person whose death occurs in South Dakota must file the medical certificate portion of the death certificate required by the Department of Health. Reports may be filed electronically. Criminal penalties exist for the failure to do so in a timely fashion.



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