

Legal Brief

Registration of Births

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

Every live birth occurring in this state must be registered with the South Dakota Department of Health. If a physician is in attendance at the birth, the physician is responsible to either register the birth him- or herself within seven (7) business days or within five (5) business days forward the necessary information to the person designated by the institution where the birth occurred to register the birth. If the physician or institution has the ability so to do, they are to register the birth electronically; if not, the birth may be registered by a paper filing. The failure of a person required to register a birth to do so within one (1) year of the birth is a class two (2) misdemeanor.

Discussion

Every live birth occurring in this state must be registered with the South Dakota Department of Health on the form required by the Department. The filing must be completed within seven (7) business days after the date of each live birth, and must be filed electronically unless the filer doesn't have the capability to do so, in which case it may be filed on paper. Certificates may be filed more than seven (7) days after the date of birth, but must provide additional information in order to qualify for filing. SDCL 34-25-8.

If a birth occurs in an institution, the physician in attendance at the birth or the physician's designee shall, within five (5) business days after the birth, obtain the personal data and the medical information required by the certificate and provide it to the person designated by the institution to file the certificate. If a birth occurs outside an institution, SDCL 34-25-13.1 provides that the certificate shall be prepared and filed by one of the following in the indicated order of priority:

1. The physician in attendance at or immediately after the birth;
2. Any other person in attendance at or immediately after the birth;
3. The father or mother;
4. The person in charge of the premises where the birth occurred.

For the purposes of birth registration, the mother is deemed to be the woman who gives birth to the child, unless otherwise determined by a court of law prior to the filing of the birth certificate. If the mother was married at the time of conception or birth, or at any time between conception and birth, the name of the husband shall be entered on the certificate as the father of the child unless:

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1. Paternity has otherwise been determined by a court of competent jurisdiction, in which case the name of the father as determined by the court shall be entered;
2. The mother and the mother's husband execute joint or separate affidavits attesting that the husband is not the father of the child, in which case information about the father shall be omitted from the certificate; or
3. The mother executes an affidavit attesting that her husband is not the biological father and providing the name of the alleged biological father, the husband executes an affidavit attesting that he is not the biological father, and the alleged biological father executes an affidavit attesting that he is the biological father, then the attesting biological father shall be shown as the father on the certificate.

The affidavits described above may be joint or individual, but each signature must be individually notarized. SDCL 34-25-13.1.

If the mother was not married at the time of conception or birth, or at any time between conception and birth, the name of the father may not be entered on the certificate of birth without the written consent of the mother and the person to be named as the father unless a judicial determination has been made, in which case the name of the father as determined by the court shall be entered. SDCL 34-25-13.2.

Upon the birth of a child to an unmarried woman, and prior to discharge, any hospital, physician, health care provider, midwife, or nurse who assists in the birth of the child shall:

1. Provide an opportunity for the child's mother and alleged father to sign under oath an affidavit of paternity; and
2. Provide to the mother and to the alleged father, any necessary oral, video, audio, or written information furnished by the Department of Social Services which describes, among other things, the rights and responsibilities of parentage; the benefits of having the child's paternity established; the alleged father's legal rights and responsibilities, including his right to request genetic testing; the child's right to receive child support; that a signed affidavit of paternity creates a rebuttable presumption of paternity; that a signed affidavit of paternity allows the establishment of a support obligation without requiring further proceedings to establish paternity; and, that completion of the affidavit of paternity is voluntary and is not required of either the mother or the alleged father.

If obtained, the fully completed, signed, and notarized original affidavit of paternity shall be forwarded to the Department of Health as provided in SDCL 34-25 within seven (7) days following the birth of the child.

If the mother was not married at the time of conception or birth, or at any time between conception and birth, the mother's surname shall be shown on the birth certificate as the legal surname of the child at the time of birth unless an affidavit of acknowledgment of paternity signed by both biological parents is received as described above.

If the father is not named on the certificate of birth, no other information about the father shall be entered on the certificate. SDCL 34-25-13.4.

Either of the parents of the child must sign a document attesting to the accuracy of the personal data entered on the birth certificate. If the parents are unable to sign, the document shall be signed by the person completing the certificate. SDCL 34-25-9.2.

If the parents of the newborn are unknown, the newborn must immediately be brought to a physician for examination. The physician must then assign a given name (i.e., a first name) to the child and within seven (7) days file a birth certificate with the Department of Health. SDCL 34-25-14.

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Pursuant to 34-25-9.1, if a birth occurs outside an institution, the certificate shall be prepared and filed by one of the following in the indicated order of priority:

1. The physician in attendance at or immediately after the birth, or in the absence of such a person;
2. Any other person in attendance at or immediately after the birth, or in the absence of such a person;
3. The father or mother, or, in the absence of the father and the inability of the mother, the person in charge of the premises where the birth occurred.

Any person required to prepare and file as listed above who fails to do so within one year of the birth is guilty of a Class 2 misdemeanor.

In the event 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 with the Department of Health within seven (7) days of delivery. If there is no physician or other medical provider on 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.

Any parent may provide a name for a stillborn child on the request for a certificate of birth resulting in stillbirth. If the requesting parent does not wish to provide a name, the Department of Health shall fill in the certificate with the name "baby boy" or "baby girl" and the last name of the parent.

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 in attendance at a birth must file the required form of certificate within seven (7) days or provide the necessary information to the person designated by the hospital or other institution within five (5) days. Certificates may be filed electronically.



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