

Purpose

The purpose of this handbook is to acquaint persons responsible for the registration of births with the vital registration system in Texas, and to provide instructions for completing and filing birth certificates.

The birth certificate is an individual's basic claim and proof of citizenship, identification and relationship to his or her parents. It serves as the primary document for individuals to enter school, play little league sports, obtain a social security number and account, a driver's license, a marriage license, a passport, and lastly to prove they are citizens and are qualified to work in this country.

In addition to being the primary document of identification for an individual, a birth certificate contains a wealth of medical data. These data are collected for all births and are analyzed for specific geographic areas and periods of time. The resulting statistics contain essential public health information that serves to describe the health status and needs of all people of the area. For example, adequacy of prenatal care can be examined using birth certificate data. Pregnancy outcome can be assessed through statistics on birth weight and length of gestation. Abnormal conditions of mothers and babies can be identified and investigated. Complete and accurate birth certificate medical data are important keys to improving the health of a population.

Registration Requirements

A Certificate of Birth (form VS-111 or VS-111.1; see Appendices A and B for copies of the birth certificates) must be filed for any product of conception meeting the definition of a live birth, regardless of the length of gestation or chance of survival. The Texas Administrative Code (TAC) defines a "live birth" as the complete expulsion or extraction from its mother of a product of conception, irrespective of the duration of pregnancy, which, after such separation, breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached; each product of such a birth is considered live born. [25 TAC §181.1]

The birth certificate must be filed with the appropriate local registrar within five (5) days from the date of birth. [HSC §192.003] However, a birth certificate may be accepted by the the local registrar, so long as the certificate is filed within one year from the date of birth. [HSC §192.021(a)]

The birth certificate must be filed by the attendant at birth. If the birth occurs in a hospital or birthing center, an administrator may file the certificate. If the birth did not occur in a licensed institution and was not attended by a registered, certified or documented health care provider, the birth should be registered by the father or mother of the child. Chapter 4 (starting on page 67) of this handbook provides detailed filing information.

Births must be filed using the forms prescribed by the Texas Department of Health, Bureau of Vital Statistics. The most recent revision of the form must be used.

Should the infant die, a Certificate of Death (form VS-112) must also be filed. For instructions on completing the Certificate of Death, see the *Handbook on Death Registration*.

When a fetal death occurs, a Certificate of Fetal Death (form VS-113) must be filed. The Texas Administrative Code defines a "fetal death" as death prior to the complete expulsion or extraction from its mother of a product of conception, irrespective of the duration of pregnancy; the death is indicated by the fact that after such separation, the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles [25 TAC §181.1]. See the *Handbook on Fetal Death Registration* for instructions on completing the Certificate of Fetal Death.

Confidentiality

We cannot stress enough the value and importance of the Certificate of Birth. Local registrars must make every effort to assure the preservation of this document and to protect its confidentiality. Certified copies may be issued only to properly qualified applicants who have submitted proof of their identification and have fully identified the record requested. It is a third degree felony to falsely obtain, use, or alter another person's Certificate of Birth or Death.

The fact of birth (name, date and place) of an individual is public knowledge; however, the birth certificate is not. A birth certificate is a confidential record for the first 50 years after filing and may be released only to a properly qualified applicant. [HSC §191.051; 25 TAC §181.1; GC §552.115] A certified copy of a birth certificate includes only the upper "legal" portion down to and including the local registrar's signature.

In addition to the demographic information, information held under the section entitled "Confidential Information For Medical and Public Health Use" are confidential and are not considered open records for the purpose of the open records law. That information, including parents' signatures and social security numbers, is not included in a certified copy and may not be released or made public on subpoena or otherwise, except for statistical purpose, where no person, patient, or facility is identified. [HSC §192.002]

Penalties

It is a Class A misdemeanor if a person knowingly discloses the medical or health information, or knowingly induces or causes another to disclose information. It is a Class C misdemeanor if a person refuses or fails to furnish correctly any information in the person's possession affecting a certificate. It is also a Class C misdemeanor if a person fails, neglects, or refuses to fill out and file a birth certificate with the local registrar or deliver the certificate upon request to the person with the duty to file it. To falsely obtain, use, or alter another person's Certificate of Birth is a third degree felony with a fine of up to \$10,000 and 2 to 10 years in prison. [HSC §§195.003– 195.005]

Hospital Responsibilities

The responsibilities of the hospital in the birth registration process are as follows:

- ! Obtain information needed for completion of the birth certificate from appropriate sources. Sources include the mother of the child, mother's physician, infant's physician, or medical records. Information may be obtained from the immediate family or other sources as needed.
- ! Complete a Certificate of Birth for each live birth that occurs in the hospital or en route to the hospital, using the instructions in Chapter 2 of this handbook.
- ! If the parents are not married to each other, provide whenever possible an opportunity for the father to acknowledge paternity, including the Acknowledgment of Paternity (AOP) form and the required oral and written notification of rights and responsibilities.
- ! Inform the parents that they may request an application for child support services by calling the Office of Attorney General at 1-800-252-8014.
- ! Review the certificate, and AOP if applicable, for completeness and accuracy.
- ! Obtain the certifier's signature and appropriate parent's signature.
- ! File the certificate with the proper local registrar within five (5) days from the date of birth.

- ! If using Certificate Manager, transmit the data to the state within seven days of the date of birth.
- ! Cooperate with the Bureau of Vital Statistics (BVS) and local registrars concerning queries on certificate entries.
- ! Call on the local registrar or BVS for advice and assistance when necessary.

Midwife Responsibilities

The responsibilities of the midwife in the birth registration process are as follows:

- ! Midwives must be documented each March with the Texas Department of Health [22 TAC §831.11(e)]. Local registrars may also confirm the current documentation status of a midwife by contacting the department's Midwifery Program at (512) 834-4523.
- ! Obtain information needed for completion of the birth certificate from appropriate sources. Those sources include the mother of the child, the mother's physician or medical records, and the infant's physician or medical records. Information may be obtained from the immediate family and other sources as needed.
- ! Complete a Certificate of Birth for each live birth attended, using the instructions in Chapter 2 of this handbook.
- ! If the parents are not married to each other, provide whenever possible an opportunity for the father to acknowledge paternity, including the Acknowledgment of Paternity (AOP) form and the required oral and written notification of rights and responsibilities.
- ! Inform the parents that they may request an application for child support services by calling the Office of the Attorney General at 1-800-252-8014.
- ! Review the certificate, and AOP if applicable, for completeness and accuracy.
- ! Certify the birth certificate as the attendant and obtain appropriate parent's signature.
- ! File the certificate with the proper local registrar within five (5) days from the date of birth.
- ! Cooperate with the Bureau of Vital Statistics (BVS) and local registrars concerning queries on certificate entries.
- ! Call on the local registrar or BVS for advice and assistance when necessary.

Responsibility for Non-institutional Births

A birth that occurs outside a licensed institution such as a hospital or licensed birthing center is a non-institutional birth. If the birth is attended by a registered, certified or documented health care provider, such as a midwife, doctor, or EMT, the birth may be registered by the attendant after he or she has presented his or her professional documentation to the local registrar, following the procedures in outlined in Chapter 4.

If there is no physician, midwife, or person acting as midwife in attendance at a non-institutional birth, documentation is required from the parent(s) before a birth certificate may be filed. For specific requirements, see Chapter 4, page 67. These births should be registered by one of the following listed in order of preference:

- (1) the father or mother of the child; or
- (2) the owner or householder of the premises where the birth occurs.

The responsibilities of the person registering a non-institutional birth are as follows:

- ! Obtain information needed for completion of the birth certificate from appropriate sources. Those sources include the mother of the child, mother's physician, infant's physician, or medical records. Information may be obtained from the immediate family or other sources as needed.
- ! Complete a Certificate of Birth for each live birth attended, using the instructions in Chapter 2 of this handbook.
- ! If the parents are not married to each other, obtain information necessary whenever possible for the father to acknowledge paternity. The information should include the Acknowledgment of Paternity (AOP) form and the required oral and written notification of rights and responsibilities.
- ! Inform the parents that they may request an application for child support services by calling the Office of the Attorney General at 1-800-252-8014.
- ! Review the certificate, and AOP if applicable, for completeness and accuracy.
- ! Certify the birth certificate as the attendant and obtain appropriate parent's signature.
- ! File the certificate with the proper local registrar within five days from the date of birth. Additional documentation will be required before a non-institutional birth may be filed. Refer to the detailed instructions for "Non-institutional Births" in Chapter 4 of this handbook.
- ! Cooperate with the Bureau of Vital Statistics and local registrars concerning queries on certificate entries.
- ! Call on the local registrar or the Bureau of Vital Statistics for advice and assistance when necessary.

Paternity

Paternity refers to establishing a legal relationship between the father and child. When the mother and father are married to each other, or were married and the marriage ended within 300 days before the birth of the child, the law presumes that the mother's husband or former husband is the father of the child. In that situation, no signatures on any form are required to add the father's information to the birth certificate.

When the parents are not married, or the mother is married to someone other than the father (or was married and the marriage ended within 300 days before the birth of the child), paternity may be voluntarily established by using a witnessed Acknowledgment of Paternity, Form VS-159.1 (AOP).

If either parent is unsure that the man is actually the father of the child, he or she should not sign the AOP, but should have a genetic test. If the test does not exclude the man as the father of the child, then the parents may sign the AOP.

Paternity may be the most complex issue in the completion of a birth certificate. A variety of information must be obtained before completing this portion of the record. For complete information regarding establishing paternity, including item-by-item instructions on how to complete the AOP, refer to the *Handbook on Paternity* available from the Bureau of Vital Statistics.

Paternity Establishment

Legal Finding

When both parents sign a witnessed Acknowledgment of Paternity form (AOP) and the form is filed with BVS, the AOP becomes a legal finding equivalent to a judicial determination. The legal finding does three things:

1. It creates a parent-child relationship between the father and child.
2. It imposes upon him a legal duty to support the child.
3. It enables the court to grant him the right of custody or the right of visitation with the child.

Either parent has 60 days from the date the AOP was received at BVS or until the date of the first hearing, whichever occurs first, to rescind (cancel the legal finding created by the AOP). The rescission must be done by filing a petition with the court. For more information about rescission, please refer to the *Handbook on Paternity*.

Another way to establish a legal finding of paternity is by determination of a court.

Presumption of Paternity

A man is presumed by law to be the father of a child when he and the mother are married to each other at the time of the child's birth, or were formerly married but the marriage ended not more than 300 days before the birth. The marriage may have ended because of death, annulment, divorce, or having been declared void [TFC §151.002]. The AOP is *not necessary* to establish this legal presumption of paternity.

Note: Before September 1, 1999, a father's signing of the birth certificate or filing an AOP with a mother who was unmarried established a rebuttable presumption of paternity. The presumptions established by these procedures remain in effect unless a court has determined otherwise. However, after September 1, 1999, the father's signing the birth certificate has no legal significance or effect, and the filing of the AOP establishes a legal finding of paternity.

Acknowledgment of Paternity

Overview of the Process

If the parents are not married to each other and want to establish a legal father and/or add the father to the child's birth certificate, they may voluntarily complete the Acknowledgment of Paternity (AOP) form. The AOP must be signed by both parents before a witness or witnesses. If the mother is married to someone other than the biological father of the child or has been married within 300 days before the birth of the child, the AOP must also include a Denial of Paternity from her husband or former husband. The AOP must be filed with the Bureau of Vital Statistics (BVS).

The AOP forms are supplied upon request by the Bureau of Vital Statistics. See Appendix C for an example of an AOP form (VS-159.1).

How to Inform Parents of their Rights and Responsibilities

The law requires that anyone providing the AOP form must also provide the opportunity for *both* oral and written notification of the parental rights and responsibilities to the parents before they sign the AOP.

The parents can receive oral notification by the following means:

- ! watching a video,
- ! listening to a recording of the Rights and Responsibilities in English or Spanish by dialing 1-800-252-8014 and choosing 4 from the menu, or

- ! having someone read the Rights and Responsibilities to them from the back of the AOP.

The parents can receive written notification by the following:

- ! reading the Rights and Responsibilities from the back of the AOP.

To request copies of the video, pamphlets, or additional information, you may contact the Office of the Attorney General, Child Support Division:

Joan Hutcheson
 P.O. Box 12017
 Austin, Texas 78711-2107
 512-460-6317
 512-460-6043 (fax)
 joan.hutcheson@oag.state.tx.us

Witnessing Signatures

All parties who sign the AOP must do so before a witness. The witnesses must also sign and date the form. It is generally recommended that the witness be a disinterested party. A witness must be 18 years of age or older. The signature of the witness should be dated the same as the signature that is being witnessed.

Denial of Paternity

If the mother is married to someone other than the biological father of the child or the child was born within 300 days after the marriage terminated, the Denial of Paternity section of the form must be completed. In that situation, BVS will not accept the AOP unless the mother and biological father sign the acknowledgment portion, and the husband or former husband signs the denial portion of the AOP with the consent of the mother.

As a result of the husband or former husband's signing the Denial of Paternity, this form becomes a legal determination of his nonpaternity of the child, removes his legal duty to support the child, and terminates his right of conservatorship, possession of, or access to the child. [TFC §160.212(d)] In addition, the biological father's information may be added to the birth certificate, even though the mother is or was married to someone else.

Note: The AOP will not be accepted for filing if it contains only a denial of paternity and no acknowledgment of paternity.

Completing the AOP Before the Birth of the Child

A partially completed, witnessed AOP and if applicable, a Denial of Paternity, may be signed before the birth of the child when the biological father and/or the husband or former husband will not be present at the birth of the child. The information relating to the child's name, date of birth, place of birth, and sex may be added after the birth has occurred. The AOP can be filed with the birth certificate or at any time after the birth has occurred.

It is advisable to complete the AOP ahead of time whenever possible. Here are examples of situations in which a partially completed, witnessed AOP may be signed before the birth of the child:

- ! If the mother is not married and the biological father will not be present at the birth of the child, he may sign a partially completed, witnessed AOP before the birth of the child. This may include fathers currently in prison, traveling in a foreign country, serving in the military, etc.
- ! If the mother is married to someone other than the biological father of the child (or was married not more than 300 days before the birth), the biological father may sign the partially completed, witnessed AOP and/or the husband or former husband may sign the Denial of Paternity before the

birth of the child.

Filing the AOP at the Time of Birth

To establish a legal father and add the father to the birth certificate when the parents are not married to each other, the parents of the child and, if applicable, a presumed father, can complete and sign a witnessed AOP at the time of birth.

The AOP and the Birth Certificate

Mother Married

If the mother is married at the time of birth, or was married within 300 days before the birth, the law presumes that her husband or former husband is the father. If her husband (or former husband) is the biological father, the mother and father *should not* complete an AOP and the father's information may be included on the child's birth certificate.

Common-law marriage is a legal marriage in Texas. If the parents state they are married by virtue of the common law, as long as they are not married to another party and they both are at least 18 years of age, then the birth certificate should be completed with information on both parents. BVS *will* accept the birth certificate without an AOP as long as Item 19a "Mother Married?" is checked "Yes." However, the Office of the Attorney General recommends that an AOP be signed in cases involving common law marriage because of the difficulty of proving a common law marriage if it is ever challenged. To avoid confusion in this situation, please mail the AOP directly to BVS rather than attaching it to the birth certificate. The address is Bureau of Vital Statistics, 1100 West 49th Street, Austin, TX 78756.

If a couple have been married but have separated, regardless of the reason or length of separation, the legal presumption of paternity still rests with the husband.

If the mother was married to the biological father but the marriage was ended by divorce, annulment, or death, the ex-husband or deceased husband is by law the presumed father if the child was born within 300 days after the marriage ended. You may enter the information concerning the ex-husband or the deceased husband on the birth certificate without the AOP. Since you will check "No" for the question "Mother Married?" (Item 19a), you must note in the left margin "mother divorced" or "husband deceased" to prevent the record's being rejected for lack of an AOP.

Mother Married to Someone Other than Biological Father

If the mother is married or was married within 300 days before the birth to someone other than the biological father of the child, the AOP may be used to add the biological father's information on the child's birth certificate. In this situation, the husband or former husband must sign the denial portion of the AOP with the mother's consent, and the mother and biological father must also sign the acknowledgment portion. BVS will not accept the AOP unless all three parties complete their portions of the form. The signing of the AOP by all three parties establishes a legal finding of paternity and allows the biological father's information to be added to the birth certificate, even though the mother is married to someone else.

All three signatures must be dated and witnessed, and the witness(es) must also sign and date. The AOP and original birth certificate must be submitted together when filed with the local registration office and BVS.

If the AOP cannot be completed, you can list the husband or former husband of the mother on the birth certificate, or leave the father's information blank.

Mother Not Married within 300 Days before Birth

If the mother is not married at the time of birth or within 300 days before the birth, by law there is no presumed father. The mother and biological father may sign a witnessed AOP to add his information to the birth certificate and establish a legal finding of paternity. The AOP and original birth certificate must be submitted together when filed with the local registration office and BVS.

If the AOP cannot be completed, then the father's information must be left off the birth certificate.

Minor Parents

If either or both parents are minors (under 18 years of age), they can sign the Acknowledgment of Paternity regardless of how old they are. Additionally, only the baby's mother and father (not the grandparents) may decide whether or not he and/or she will sign the AOP.

Mother and Father Do Not Agree on Who Is the Father

If the mother and man claiming to be the father do not agree on who should be named as the father, regardless of their marital status, inform them both that the father's information will be left blank and refer them to court.

If a man believes he is the father and the mother does not agree, he may file a Notice of Intent to Claim Paternity VS-130 (see Appendix D). This action alone will not legally establish paternity or allow him to be named on the birth certificate, but it allows him to assert that he believes he is the father and wishes to preserve his rights as a parent. For more information on the Notice of Intent Form, see "Paternity Registry" on page 16b.

The man who believes he is the father may also open a case with the Office of the Attorney General.

The birth certificate can be amended subsequent to filing, either voluntarily or by court order. See the section in Chapter 3 entitled "Amendments to Birth Records after Filing with Local and State Registrars," beginning on page 59, for detailed information.

Filing the AOP after the Birth Certificate Has Been Filed

The witnessed AOP may be filed with BVS, free of charge, at any time after the birth certificate has been filed. However, the father's information on the birth certificate is not changed unless the required amendment forms, supporting documentation, and \$25.00 fee have been received by BVS. Parents should be encouraged to complete and file the AOP with BVS even if they do not want to amend the birth certificate at that time. See Chapter 3 for specific information on how to amend the birth certificate based on paternity.

Completing and Filing the AOP on Separate Forms

The mother, biological father, and if applicable, the husband or former husband may sign and date separate, witnessed AOP forms. The forms must be submitted together to the local registration office and/or BVS for filing.

Here are examples of situations in which the AOP may be completed on separate forms:

- ! If the mother is not married, the mother and biological father may sign and date the witnessed AOP on the same form or separate forms.
- ! If the mother is married to someone other than the biological father of the child (or was married not more than 300 days before the birth), the mother and biological father may sign and date either the same witnessed AOP form or separate forms, and the husband (or former husband) must sign the witnessed Denial of Paternity on the same or a separate form.

Reviewing the AOP Before Filing

- ! If the "Yes" box in Item 12 is checked, the Denial of Paternity portion must be completed.
- ! All information, including signatures, should be completed in blue or black ink.
- ! Signatures must be original, witnessed, and dated.
- ! There should be no visible alterations, erasures, or strike-overs. Mistakes should not be crossed out and initialed on the AOP.

- ! Complete each item without leaving blanks, unless specifically directed to do so by the item-by-item instructions. (See the *Handbook on Paternity* for item-by-item instructions on completing the AOP.)
- ! If the AOP and the birth certificate are submitted together, check that the names and dates on the AOP match those on the birth certificate.
- ! If the AOP is completed on separate forms, check that all information that is repeated on more than one form is identical. Also check that all necessary portions of the AOP are included.

Making Copies

Be sure to give each party to the AOP a copy of the completed AOP before they leave your office, including the rights and responsibilities on the back of the form.

Paternity Registry

BVS has established a Paternity Registry for men to voluntarily assert their parental rights. The purpose of the Paternity Registry is to “protect the parental rights of fathers who affirmatively assume responsibility for children they may have fathered, and expedite adoptions of children whose biological fathers are unwilling to assume responsibility for their children by registering with the registry or otherwise acknowledging their children.” [TFC §160.251(b)(1–2)]

A man is not required to register with the Paternity Registry. It is unnecessary for him to register if he is listed as the biological father on the child’s birth certificate, if he has completed an AOP with the child’s mother, or if he has been adjudicated to be the biological father of the child by a court of competent jurisdiction. The Paternity Registry does provide an opportunity for a father to assert his parental rights when he cannot complete the AOP or be listed as the father on a child’s birth certificate.

The Paternity Registry and The Notice of Intent to Claim Paternity Form

The Notice of Intent to Claim Paternity form is used to add the father’s name to the Paternity Registry maintained by the Bureau of Vital Statistics (BVS). [TFC §160.256] A man who wishes to claim paternity for a child he may have fathered can complete a Notice of Intent to Claim Paternity. This form is used in situations where the father and mother do not have a continuing relationship and the man is not listed as the father on the birth certificate or AOP or when the biological father is unable to sign the AOP because he and the mother cannot obtain a denial of paternity from the man to whom she was married at or within 300 days before the birth.

The following is a list of examples (not all-inclusive) in which the man may use the Notice of Intent to Claim Paternity form to register his assertion of paternity to protect his rights:

- ! A man and woman have a consenting sexual relationship for a brief period of time and they have no further contact. The man understands the woman may have become pregnant and he wishes to assert his paternity for the possible child. He would complete the Notice of Intent to Claim Paternity form to register his assertion.
- ! A man and woman do not agree that he is the father of her child. The man wishes to assert his paternity.
- ! More than one man claims to be the father of the child. Each man would complete a separate Notice of Intent.
- ! The mother refuses to complete and sign the AOP form.
- ! The mother was married at or within 300 days before the child’s birth and the mother and biological

father cannot obtain a denial of paternity from her current or former husband.

The Notice of Intent form will not legally establish paternity nor can it be used to add a man's name to the child's birth certificate. It is simply an assertion of belief that he is the father of a child and wishes to preserve his rights as a parent.

See Appendix D for an example of a Notice of Intent to Claim Paternity form (VS-130).

Time Requirement

The Notice of Intent form must be filed before or within 30 days of the date of birth of a child. [TFC §160.256] The man should also be encouraged to obtain legal advice and petition the court for the establishment of legal paternity.

Artificial Insemination

If a husband and wife consent to the artificial insemination of the wife, any resulting child is the child of the couple; the resulting child *is not* the child of the donor, *unless* the donor is the husband of the woman. The consent must be in writing and must be acknowledged. If the mother of the child was married at the time of conception or the birth of the child, the husband of the mother is *presumed* to be the father of the child *unless* otherwise determined by a court of competent jurisdiction.

Surrogacy

An increasing number of births are occurring as the result of a surrogate agreement. In these situations, the question usually arises as to what parents' names are to be shown on the original birth certificate. The existing policy states that "the mother of the newborn is the woman who gives birth to the child; the father is the husband of the mother. The donors, as appropriate, must seek parenthood through the adoption process or petition a Texas District Court to determine the maternal and paternal individuals and order the Bureau of Vital Statistics or the hospital to place the names of these individuals on the record instead of the birth person and her husband."

In other words, if a woman is implanted with a fertilized egg and delivers an infant, she should be named as the mother of the child on the record of birth unless an existing court order deems otherwise, and if she is married, her husband is considered to be the father of the child. [TFC §§151.101, 151.102, 151.103] The donor parents in this case cannot be named on the birth certificate until they have completed the adoption process through a court of competent jurisdiction, and the court has ordered that a new birth certificate be created.

However, if the donor parents obtain a court order prior to the birth naming them as parents, they **can** be named on the original birth certificate.

Worksheets

One method of collecting the information for a birth certificate includes the use of worksheets. Many hospitals are currently using worksheets of various types and formats. BVS has developed three worksheets in a format we believe will aid in the collection of this information. Hospitals may use these worksheets as they are, modify them, or develop their own in whatever format they deem most useful.

The Birth Certificate Worksheet, VS-109, concerns information supplied by the mother, either by having her fill it out, or by having the hospital staff interview her and fill in the information for her. This worksheet is available in both English and Spanish (VS-109.1). In addition, the O. B. Worksheet, VS-109.2, and the Pediatric Worksheet, VS-109.3, are provided for hospital personnel to collect medical information about the mother and child. The worksheets are available from BVS upon request. Examples of these worksheets are in Appendix E of this

handbook.