

**FUNERAL BOARD LAWS
AS OF THE 2019 LEGISLATIVE SESSION**

**TITLE 50, CHAPTER 15
VITAL STATISTICS**

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CHAPTER 15 VITAL STATISTICS

Chapter Administrative Rules

ARM 37.5.117 Certain Title 50 programs — applicable hearing procedures.
Title 37, chapter 8, ARM Records and statistics.

Chapter Law Review Articles

Property Rights in Personal Information: An Economic Defense of Privacy, Murphy, 84 Geo. L.J. 2381 (1996).

Part 1 General Provisions

50-15-101. Definitions. Unless the context requires otherwise, in parts 1 through 4, the following definitions apply:

(1) "Advanced practice registered nurse" means an individual who has been certified as an advanced practice registered nurse as provided in 37-8-202.

(2) "Authorized representative" means a person:

(a) designated by an individual, in a notarized written document, to have access to the individual's vital records;

(b) who has a general power of attorney for an individual; or

(c) appointed by a court to manage the personal or financial affairs of an individual.

(3) "Dead body" means a human body or parts of a human body from which it reasonably may be concluded that death occurred.

(4) "Department" means the department of public health and human services provided for in 2-15-2201.

(5) "Dissolution of marriage" means a marriage terminated pursuant to Title 40, chapter 4, part 1.

(6) "Fetal death" means death of the fetus prior to the complete expulsion or extraction from its mother as a product of conception, notwithstanding the duration of pregnancy. The death is indicated by the fact that after expulsion or extraction, 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. Heartbeats are distinguished from transient cardiac contractions. Respirations are distinguished from fleeting respiratory efforts or gasps.

(7) "Final disposition" means the burial, interment, cremation, removal from the state, or other authorized disposition of a dead body or fetus.

(8) "Invalid marriage" means a marriage decreed by a district court to be invalid for the reasons contained in 40-1-402.

(9) "Live birth" means the complete expulsion or extraction from the mother as a product of conception, notwithstanding the duration of pregnancy. The birth is indicated by the fact that after expulsion or extraction, the child 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. Heartbeats are distinguished from transient cardiac contractions. Respirations are distinguished from fleeting respiratory efforts or gasps.

(10) "Local registrar" means a person appointed by the department to act as its agent in administering this chapter in the area set forth in the letter of appointment.

(11) "Person in charge of disposition of a dead body" means a person who places or causes a dead body or the ashes after cremation to be placed in a grave, vault, urn, or other receptacle or otherwise disposes of the body or fetus and who is a funeral director [licensed under Title 37, chapter 19], an employee acting for a funeral director, or a person who first assumes custody of a dead body or fetus.

(12) "Physician" means a person legally authorized to practice medicine in this state.

(13) "Registration" means the process by which vital records are completed, filed, and incorporated into the official records of the department.

(14) "Research" means a systematic investigation designed primarily to develop or contribute to generalizable knowledge.

(15) (a) "Stillbirth" means a fetal death occurring after a minimum of 20 weeks of gestation.

(b) The term does not include an abortion, as defined in 50-20-104.

(16) "System of vital statistics" means the registration, collection, preservation, amendment, and certification of vital records. The term includes the collection of reports required by this chapter and related activities, including the tabulation, analysis, publication, and dissemination of vital statistics.

(17) "Vital records" means certificates or reports of birth, death, fetal death, marriage, and dissolution of marriage and related reports.

(18) "Vital statistics" means the data derived from certificates or reports of birth, death, fetal death, induced termination of pregnancy, marriage, and dissolution of marriage and related reports.

History: En. Secs. 2, 41, Ch. 197, L. 1967; amd. Secs. 28, 48, Ch. 349, L. 1974; R.C.M. 1947, 69-4102(1), (2), 69-4401; amd. Sec. 4, Ch. 228, L. 1981; amd. Sec. 1, Ch. 402, L. 1991; amd. Sec. 104, Ch. 418, L. 1995; amd. Sec. 3, Ch. 515, L. 1995; amd. Sec. 279, Ch. 546, L. 1995; amd. Sec. 2, Ch. 91, L. 2001; amd. Sec. 1, Ch. 258, L. 2001; amd. Sec. 2, Ch. 474, L. 2007.

Compiler's Comments

2019 Code Commissioner Correction: The code commissioner inserted brackets around "licensed under Title 37, chapter 19" in (11) to reflect the repeal of funeral director licensure under sec. 14, Ch. 49, L. 2019.

2007 Amendment: Chapter 474 inserted definition of stillbirth; and made minor changes in style. Amendment effective January 1, 2008.

2001 Amendments — Composite Section: Chapter 91 inserted definition of authorized representative; and made minor changes in style. Amendment effective October 1, 2001.

Chapter 258 inserted definition of advanced practice registered nurse; and made minor changes in style. Amendment effective October 1, 2001.

Preamble: The preamble attached to Ch. 91, L. 2001, provided: "WHEREAS, an opinion by the Attorney General, issued on March 23, 2000, 48 A.G. Op. 10, held that applications for marriage licenses should be treated as confidential records once they have been completed and filed with the Clerk of the District Court; and

WHEREAS, the same opinion interprets the intent of the Legislature in enacting sections 50-15-121 and 50-15-122, MCA, to allow general information about a marriage to be made public, while safeguarding the detailed background information about the bride and groom; and

WHEREAS, the opinion seeks to clarify who is entitled to receive marriage license application information that is not made available to the public."

Severability: Section 4, Ch. 91, L. 2001, was a severability clause.

1995 Amendments — Composite Section: Chapter 418 in definition of Board substituted "board of public health" for "board of health and environmental sciences"; in definition of Department substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 515 inserted definitions of final disposition, registration, research, system of vital statistics, and vital records and changed definitions of dead body, fetal death, live birth, person in charge of disposition of a dead body, and vital statistics (see 1995 Session Law for text in regard to changed definitions). Amendment effective January 1, 1996.

Chapter 546 deleted definition of Board that read: "'Board" means the board of health and environmental sciences provided for in 2-15-2104"; in definition of Department substituted "department of public health and human services provided for in 2-15-2201" for "department of health and environmental sciences provided for in Title 2, chapter 15, part 21"; and made minor changes in style. Amendment effective July 1, 1995.

Because of the repeal of 2-15-2101, the Code Commissioner has codified the reference to 2-15-2201.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

Severability: Section 23, Ch. 515, L. 1995, was a severability clause.

1991 Amendment: In definition of fetal death, after "gestation", inserted "or before 20 weeks of gestation if the fetus weighs more than 500 grams at the time of delivery"; and made minor change in style.

1981 Amendment: Added definitions of "dissolution of marriage" and "invalid marriage".

Cross-References

Determination of death, 50-22-101.

Attorney General's Opinions

Marriage License Application — Disclosure of Vital Statistics: An applicant for a marriage license can be required to disclose information concerning his or her dependents, race, education, and support obligations. 37 A.G. Op. 159 (1978).

50-15-102. Statewide system of vital statistics to be established. The department shall establish a statewide system of vital statistics and adopt rules for gathering, recording, using, amending, and preserving vital statistics and vital records.

History: En. Sec. 42, Ch. 197, L. 1967; amd. Sec. 104, Ch. 349, L. 1974; R.C.M. 1947, 69-4402; amd. Sec. 4, Ch. 515, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 515 inserted "amending" and "and vital records". Amendment effective January 1, 1996.

Severability: Section 23, Ch. 515, L. 1995, was a severability clause.

Saving Clause: Section 11, Ch. 228, L. 1981, was a saving section.

Severability: Section 12, Ch. 228, L. 1981, was a severability section.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Confidentiality of health care information, Title 50, ch. 16, part 5.

Administrative Rules

Title 37, chapter 8, subchapter 1, ARM Records and statistics — general provisions.

Attorney General's Opinions

Marriage License Application — Disclosure of Vital Statistics: An applicant for a marriage license can be required to disclose information concerning his or her dependents, race, education, and support obligations. 37 A.G. Op. 159 (1978).

50-15-103. Duties of department. The department shall:

- (1) divide the state into registration districts and change districts as necessary;
- (2) promulgate rules necessary to implement this chapter;
- (3) administer and enforce the provisions of this chapter and rules adopted to implement this chapter;
- (4) conduct training programs to promote uniformity of policy and procedures throughout the state in matters pertaining to the system of vital statistics;
- (5) prescribe, furnish, and distribute forms required by this chapter or rules adopted pursuant to this chapter or prescribe other means for the transmission of data that will accomplish complete and accurate reporting and registration; and
- (6) prepare and publish reports of vital statistics of this state.

History: En. Sec. 43, Ch. 197, L. 1967; amd. Secs. 107 and 109, Ch. 349, L. 1974; R.C.M. 1947, 69-4403; amd. Sec. 5, Ch. 515, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 515 deleted former (2) through (4) relating to gathering, recording, using, and preserving vital statistics, enforcing Department rules relating to those matters, and giving instructions and providing forms for those matters; and inserted (2) through (6) relating to promulgation and enforcement of rules, conducting training programs to promote uniformity, prescribing, furnishing, and distributing forms, and preparing and publishing reports. Amendment effective January 1, 1996.

Severability: Section 23, Ch. 515, L. 1995, was a severability clause.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Administrative Rules

Title 37, chapter 8, subchapter 1, ARM Records and statistics — general provisions.

50-15-104. Appointment and supervision of local registrars. The department shall:

(1) appoint local registrars;

(2) supervise local registrars and other persons required to comply with this chapter.

History: En. Sec. 49, Ch. 197, L. 1967; amd. Sec. 51, Ch. 349, L. 1974; R.C.M. 1947, 69-4409.

Administrative Rules

ARM 37.8.101 Registrars.

50-15-105. Appointment of deputies authorized. With approval of the department, local registrars may appoint deputies.

History: En. Sec. 50, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4410(part).

Administrative Rules

ARM 37.8.101 Registrars.

50-15-106. Registrars and deputies to report violations. Local registrars and deputies shall immediately report violations of this chapter or rules of the department to the department.

History: En. Sec. 50, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4410(part).

50-15-107. Payment of fees to local registrars. (1) The department may specify by rule a fee to be paid each local registrar for each complete birth, fetal death, or death certificate forwarded by the local registrar to the department or a monthly report stating the local registrar did not file certificates.

(2) The department shall annually certify to the county treasurer the number of births, fetal deaths, deaths, or monthly reports received from the county with the names of the local registrars and the amount due each.

(3) (a) The county treasurer shall pay each local registrar out of the county general fund.

(b) If the local registrar, appointed pursuant to 50-15-104, is employed by the county, the payment under subsection (3)(a) must be made to the county office in which the local registrar is employed.

History: En. Sec. 71, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4431; amd. Sec. 1, Ch. 434, L. 2003.

Compiler's Comments

2003 Amendment: Chapter 434 inserted (3)(b) concerning payment to county office; and made minor changes in style. Amendment effective April 22, 2003.

Cross-References

Fees to be charged by County Clerk for copies, 7-4-2631.

Administrative Rules

ARM 37.8.109 Monthly statement of certificates filed.

ARM 37.8.110 Payment of fees to local registrars.

50-15-108. Duty to furnish information. (1) A person having knowledge of the fact shall furnish information that the person possesses about a birth, death, fetal death, marriage, dissolution of marriage, or invalid marriage upon demand of the department.

(2) The person in charge of any institution or facility for the care of persons shall record and report all data required by this chapter relating to inmates or patients of the institution or facility.

History: (1)En. Sec. 75, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; Sec. 69-4435, R.C.M. 1947; (2)En. Sec. 70, Ch. 197, L. 1967; Sec. 69-4430, R.C.M. 1947; R.C.M. 1947, 69-4430, 69-4435; amd. Sec. 5, Ch. 228, L. 1981; amd. Sec. 1820, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1981 Amendment: Substituted "dissolution of marriage, or invalid marriage" for "or divorce" in (1).

Saving Clause: Section 11, Ch. 228, L. 1981, was a saving section.

Severability: Section 12, Ch. 228, L. 1981, was a severability section.

Administrative Rules

ARM 37.8.302 Parental review of birth certificate information.

ARM 37.8.1601 Information recorded.

50-15-109. Certificates. (1) All certificates must include information required by the department.

(2) Local registrars shall forward original certificates to the department, file a duplicate copy with the county clerk and recorder, and, unless the certificate is filed electronically, retain a triplicate copy.

(3) Local registrars may not issue certified copies of certificates.

(4) Certificates filed within 1 year after the time prescribed by the department are prima facie evidence of the facts stated in the certificates. Data pertaining to the father of a child is prima facie evidence only if the alleged father is the husband of the mother. If the alleged father is not the husband of the mother, data pertaining to the alleged father is not evidence in any proceedings adverse to the alleged father's interests, heirs, next of kin, devisees, legatees, or other successors in interest.

History: En. Secs. 51, 52, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4411, 69-4412; amd. Sec. 1, Ch. 149, L. 2005.

Compiler's Comments

2005 Amendment: Chapter 149 in (2) near end after "recorder, and" inserted "unless the certificate is filed electronically"; in (4) near beginning of first sentence after "within" substituted "1 year" for "6 months"; and made minor changes in style. Amendment effective April 8, 2005.

Cross-References

Uniform Parentage Act, Title 40, ch. 6, part 1.

Administrative Rules

ARM 37.8.103 Local registrar duties.

ARM 37.8.301 Certificate of birth.

ARM 37.8.302 Parental review of birth certificate information.

ARM 37.8.801 Death certificate.

ARM 37.8.802 Fetal death certificate.

ARM 37.8.1601 Information recorded.

Case Notes

Admission of Death Certificate With Hearsay Statement That Decedent Was Passenger — Harmless Error: In a negligent homicide case, defendant contended decedent was driving. The trial court admitted a death certificate with a statement in it that decedent was a passenger in the truck that crashed. While the death certificate was admissible to prove the victim's death, the statement about the victim being a passenger was based on hearsay and should have been excised. However, the Supreme Court held that failure to do so was harmless error in light of the testimony by other witnesses that established a substantial basis for concluding that decedent was a passenger. *St. v. Gould*, 216 M 455, 704 P2d 20, 42 St. Rep. 946 (1985).

50-15-110. Repealed. Sec. 20, Ch. 515, L. 1995.

History: En. Sec. 46, Ch. 197, L. 1967; amd. Sec. 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4406.

50-15-111. Certified copy fee. (1) The department shall prescribe, by rule, a fee for:

(a) a certified copy of certificates or records;

- (b) a search of files or records when a copy is not made;
 - (c) a copy of information provided for statistical or administrative purposes as allowed by law;
 - (d) the replacement of a birth certificate subsequent to adoption, legitimation, paternity determination or acknowledgment, or court order;
 - (e) filing a delayed registration of a vital event;
 - (f) the amendment of a vital record, after 1 year from the date of filing; and
 - (g) other services specified by this chapter or by rule.
- (2) Fees received under subsection (1) must be deposited in the state special revenue fund to be used by the department for:
- (a) the maintenance of indexes to vital records;
 - (b) the preservation of vital records; and
 - (c) the administration of the system of vital statistics.

History: (1)En. Sec. 47, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; Sec. 69-4407, R.C.M. 1947; (2)En. Sec. 48, Ch. 197, L. 1967; Sec. 69-4408, R.C.M. 1947; R.C.M. 1947, 69-4407(part), 69-4408; amd. Sec. 6, Ch. 228, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 587, L. 1983; amd. Sec. 6, Ch. 515, L. 1995; amd. Sec. 3, Ch. 380, L. 2015.

Compiler's Comments

2015 Amendment: Chapter 380 in (1) inserted introductory phrase referring to minimum charge; in (1)(a)(i) inserted "other than a death certificate"; inserted (1)(a)(ii) regarding fees for death certificates; in (2) inserted exception clause; inserted (3) concerning requirement that \$3 of each death certificate fee be transferred to department of labor and industry; and made minor changes in style. Amendment effective May 4, 2015, and terminates June 30, 2017.

1995 Amendment: Chapter 515 in introductory clause of (1) inserted "by rule" and after "a fee" deleted "of not less than \$5"; in (1)(a), at end, inserted "records"; in (1)(b), at end, inserted "or records when a copy is not made"; inserted (1)(c) through (1)(g) relating to a copy of information provided for statistical or administrative purposes, a replacement birth certificate, filing a delayed registration of a vital event, amendment of a vital record, and other services; in introductory clause of (2) substituted "under subsection (1) must" for "for a certified copy of a certificate or a search of files shall"; at end of (2)(a) substituted "vital records" for "and costs for"; and inserted (2)(c) relating to administration of the system of vital statistics. Amendment effective January 1, 1996.

Severability: Section 23, Ch. 515, L. 1995, was a severability clause.

1983 Amendments: Chapter 277 substituted reference to state special revenue fund for reference to earmarked revenue fund.

Chapter 587, in (1), changed "\$3" to "\$5"; and in (2) after "deposited" deleted "as follows: (a) \$1 shall be deposited" and after "vital records" deleted former (2)(b), which read: "the remainder shall be deposited in the state general fund".

Saving Clause: Section 2, Ch. 587, L. 1983, was a saving clause.

1981 Amendment: Increased amount of fee from \$2 to \$3 in (1); substituted "as follows" and (2)(a) and (2)(b) requiring deposit of \$1 of the fee in an earmarked fund and the remainder in the general fund for "in the state general fund".

Saving Clause: Section 11, Ch. 228, L. 1981, was a saving section.

Severability: Section 12, Ch. 228, L. 1981, was a severability section.

Cross-References

Fund structure, Title 17, ch. 2.

Administrative Rules

ARM 37.8.116 Fees for certification, file searches, and other vital records services.

50-15-112. Repealed. Sec. 20, Ch. 515, L. 1995.

History: En. Sec. 44, Ch. 197, L. 1967; amd. Sec. 49, Ch. 349, L. 1974; R.C.M. 1947, 69-4404(part); amd. Sec. 1, Ch. 178, L. 1979; amd. Sec. 1, Ch. 118, L. 1989; amd. Sec. 1, Ch. 456, L. 1989; amd. Sec. 1, Ch. 384, L. 1991.

50-15-113. Repealed. Sec. 20, Ch. 515, L. 1995.

History: En. Secs. 45, 47, Ch. 197, L. 1967; amd. Secs. 50, 107, Ch. 349, L. 1974; R.C.M. 1947, 69-4405, 69-4407(part).

50-15-114. Unlawful acts and penalties. (1) It is unlawful to disclose data in the vital statistics records of the department, local registrars, or county clerk and recorder unless disclosure is authorized by law.

(2) A person shall be fined not more than \$1,000 or be imprisoned for not more than 1 year, or both, if:

(a) the person willfully and knowingly makes any false statement in a report, record, or certificate required to be filed by law or in an application for an amendment of a report, record, or certificate or willfully and knowingly supplies false information intending that the information be used in the preparation of any report, record, or certificate or amendment;

(b) without lawful authority and with the intent to deceive, the person makes, alters, amends, or mutilates any report, record, or certificate required to be filed under law or a certified copy of the report, record, or certificate;

(c) the person willfully and knowingly uses or attempts to use or furnish to another for use, for any purpose of deception, any certificate, record, report, or certified copy made, altered, amended, or mutilated;

(d) with the intention to deceive, the person willfully uses or attempts to use any birth certificate or certified copy of a birth record knowing that the certificate or certified copy was issued upon a record that is false in whole or in part or that relates to the birth of another person;

(e) the person willfully and knowingly furnishes a birth certificate or certified copy of a birth record with the intention that it be used by a person other than the person to whom the birth record relates.

(3) A person shall be fined not less than \$25 or more than \$500, imprisoned for not more than 30 days, or both, if the person:

(a) knowingly transports or accepts for transportation, interment, or other disposition a dead body without an accompanying permit as provided by law;

(b) refuses to provide information required by law;

(c) willfully neglects or violates any of the provisions of law or refuses to perform any of the duties imposed upon the person by law.

History: (1)En. Sec. 44, Ch. 197, L. 1967; amd. Sec. 49, Ch. 349, L. 1974; Sec. 69-4404, R.C.M. 1947; (2)En. Sec. 76, Ch. 197, L. 1967; Sec. 69-4436, R.C.M. 1947; (3)En. Sec. 77, Ch. 197, L. 1967; Sec. 69-4437, R.C.M. 1947; R.C.M. 1947, 69-4404(part), 69-4436, 69-4437; amd. Sec. 1, Ch. 487, L. 1989; amd. Sec. 2, Ch. 384, L. 1991; amd. Sec. 1821, Ch. 56, L. 2009; amd. Sec. 27, Ch. 19, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 19 in (3)(c) at end substituted "the person" for "him". Amendment effective October 1, 2011.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1991 Amendment: At end of (1), after "law", deleted "and approved by the department".

1989 Amendment: In (3) increased from \$100 to \$500 maximum penalty for knowingly transporting, interring, or disposing of a dead body without a permit or for refusing to provide information required by law; and made minor changes in phraseology.

Cross-References

Willfully defined, 1-1-204.

Knowingly defined, 1-1-204, 45-2-101.

General requirements of criminal act and mental state, 45-2-103.

Permit for disposition of body, 50-15-405.

50-15-115 through 50-15-120 reserved.

50-15-121. Copies from system of vital statistics. (1) Except as provided in subsections (6) and (7), the department and county clerk and recorders shall, upon receipt of an application, issue a certified copy or copies of a vital record or a part of a vital record to the registrant, the registrant's spouse, children, parents, or guardian, or an authorized representative. Other individuals may obtain certified copies when the individual demonstrates that the record is needed for the determination or protection of the individual's personal or property rights. The department shall adopt rules to further define those who may obtain copies of vital records filed under this chapter.

(2) All applications, forms, and procedures used in the issuance of certified copies of vital records in the state must be uniform and prepared or approved by the department. All certified copies must contain security features that deter the document from being altered, counterfeited, duplicated, or simulated without ready detection that there have been these changes to the document.

(3) Each copy issued must show the date of filing. Copies issued from amended records must be marked and must show the effective date of the amendment. Copies issued from delayed records must be marked, must include the date of filing, and must contain a statement of the evidence used to establish the delayed certificate. A copy issued of a certificate of foreign birth must indicate the fact of foreign birth and the date of birth (if known), must show the actual place of birth, and must state that the certificate is not proof of United States citizenship for the adoptive child.

(4) A certified copy or other copy of a death certificate must be issued upon request of any person.

(5) A certified copy of a vital record or any part of a vital record, issued in accordance with subsections (1) through (3), must be considered for all purposes the same as the original. The admissibility of a certificate or vital record filed more than 1 year after the event or after a corrective record is filed, of a vital record that has been amended, or of a certificate of foreign birth must be determined by the judicial or administrative body or official before whom the certificate is offered as evidence.

(6) This section may not be construed to permit disclosure of confidential information contained in a birth certificate for medical or health use or of information for statistical purposes only contained in a certificate of marriage or report of dissolution of marriage unless disclosure is specifically authorized by law for statistical or research purposes or unless ordered by a court.

(7) (a) When the department receives information that a certificate may have been registered through fraud or misrepresentation, it shall withhold issuance of the certificate or any copy of that certificate pending issuance of an order after an administrative contested case hearing before the department to determine whether fraud or misrepresentation has occurred.

(b) The hearing provided for in subsection (7)(a) must be conducted pursuant to the Montana Administrative Procedure Act. In the proceeding, the department shall notify the registrant or the registrant's authorized representative and provide the registrant or the representative the opportunity to be heard.

(c) If, upon conclusion of the hearing, fraud or misrepresentation is not found, the department may issue the certificate or copies of the certificate in question.

(d) If, upon conclusion of the hearing, fraud or misrepresentation is found, the department may not register the certificate unless ordered to do so by a court.

(e) An affected person may appeal the department's decision to the district court as provided in Title 2, chapter 4, part 7.

(8) A person may not prepare or issue any certificate that purports to be an original or certified copy, except as authorized in this chapter or rules adopted to implement this chapter.

(9) The department may, by rule, prescribe details for the hearing and appellate procedures contained in this section.

History: En. Sec. 7, Ch. 515, L. 1995; amd. Sec. 1, Ch. 118, L. 1997; amd. Sec. 13, Ch. 416, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 416 in (4) after "certificate" substituted "must be issued upon request of any person" for "containing information or data that would identify any person or institution named in a certificate or report and the cause of death information may not be issued, except as follows:

(a) upon specific request of the spouse, children, parents, or other next of kin of the decedent or their respective authorized representatives, as specified by department rule;

(b) when a documented need for the cause of death to establish a legal right or claim has been demonstrated, as specified by department rule;

(c) when the request for the copy is made by or on behalf of a person or entity that provides monetary benefits to the decedent's survivors or beneficiaries, as may be specified by department rule;

(d) upon specific request by federal, state, or local agencies for research or administrative purposes and when approved for release by the department;

(e) when needed for research activities and approved for release by the department; or

(f) upon receipt by the department of an order directed to the department from a court of competent jurisdiction ordering the release"; and made minor changes in style. Amendment effective October 1, 1999.

1997 Amendment: Chapter 118 in (3), at end of first sentence and near middle of third sentence after "date of", substituted "filing" for "registration".

1995 Statement of Intent: The statement of intent attached to Ch. 515, L. 1995, provided: "A statement of intent is required for this bill because the bill gives the department of health and environmental sciences [now department of public health and human services] authority to adopt administrative rules.

The legislature intends that the rules:

(1) address the process for establishing and maintaining a statewide system of vital statistics and vital records;

(2) define persons who may obtain copies of vital records and the showing necessary to obtain vital records;

(3) establish which persons may prepare or issue certified copies of certificates of birth or vital records;

(4) establish the process and scope of disclosure of information to the public and governmental agencies as well as adequate standards for security and confidentiality of vital records;

(5) establish a system for preservation or disposal of vital records;

(6) establish the process and guidelines for registration of births;

(7) establish the process for establishing, maintaining, or dismissing applications for delayed certificates of birth;

(8) establish forms necessary to track vital statistics by courts or other governmental entities;

(9) establish a system of issuance and maintenance of certificates of birth following adoption, legitimation, or establishment of paternity;

(10) establish a system for issuance and maintenance of records of dissolution or annulment of marriage; and

(11) establish a system for the issuance and maintenance of certificates of adoption and annulment of adoption."

Severability: Section 23, Ch. 515, L. 1995, was a severability clause.

Effective Date: Section 24, Ch. 515, L. 1995, provided that this section is effective January 1, 1996.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Contested case procedure, Title 2, ch. 4, part 6.

Uniform Parentage Act, Title 40, ch. 6, part 1.

Perjury and other falsification in official matters, Title 45, ch. 7, part 2.

Confidentiality of health care information, Title 50, ch. 16, part 5.

Administrative Rules

ARM 37.8.116 Fees for certification, file searches, and other vital records services.

ARM 37.8.301 Certificate of birth.

Attorney General's Opinions

Confidentiality of Marriage License Applications: Pursuant to 50-15-122 and this section, an application for a marriage license should be treated as a confidential record once the application is completed and filed with the Clerk of the District Court. Once a marriage is reported by the Department of Public Health and Human Services, the Department or the Clerk of the District Court may disclose to the public the record of marriage, consisting of the names of the bride and groom, the date and place of the marriage, the name of the officiant, and whether the ceremony was religious or civil. 48 A.G. Op. 10

(2000). See also 48 A.G. Op. 17 (2000), in which the Attorney General clarified 48 A.G. Op. 10 (2000), by holding that 48 A.G. Op. 10 (2000), applied to all marriage applications on file with a Clerk of the District Court, not to only applications filed after the date of that opinion. (See 2001 amendment.)

Parties to Whom Marriage Application Information May Be Released: The Clerk of the District Court may not divulge or provide copies of an application for a marriage license unless the requestor is the applicant; the applicant's spouse, child, parent, or guardian; or an authorized representative, which includes: (1) a person who has a general power of attorney for a resident; (2) a person appointed by a court to manage the personal or financial affairs of a resident; (3) a representative payee; (4) a resident's next of kin; or (5) a sponsoring agency. 48 A.G. Op. 10 (2000). See also 48 A.G. Op. 17 (2000), in which the Attorney General clarified 48 A.G. Op. 10 (2000), by holding that under 50-15-122, a Clerk of the District Court may allow public inspection and copying of a marriage certificate filed pursuant to 40-1-321, but not of the marriage license itself. (See 2001 amendment.)

50-15-122. Disclosure of information from vital records or vital reports — rules. (1) It is the policy of the state to protect the integrity of vital records and vital reports, to ensure their proper use, and to ensure the efficient and proper administration of the system of vital statistics. In furtherance of the policy, a person may not permit inspection of or disclose information contained in vital records or in vital reports or copy or issue a copy of all or a part of a record or report unless authorized by this chapter, by administrative rule, or by order of a court of competent jurisdiction. Rules adopted under this chapter must provide for adequate standards of security and confidentiality of vital records.

(2) The execution of a research agreement that protects the confidentiality of the information provided to a researcher in response to a written request is required for disclosure of information that may identify a person or institution named in a vital record or report. This agreement must be made in compliance with this chapter or rules adopted to implement this chapter. Each agreement must prohibit the release by the researcher of any information that might identify a person or institution, other than releases that may be provided for in the agreement.

(3) This section does not prohibit the release of information or data that does not identify a person or institution named in a vital record or report.

(4) A challenge to a decision of a custodian of vital records to refuse disclosing information from records, as prescribed by this section and rules issued to implement this section, must be made before the department in the case of a county clerk and recorder and to a district court in the case of the department. A challenge before the department must be in the form of a contested case pursuant to the Montana Administrative Procedure Act. An appeal of the department's decision to district court must be made by filing an original action pursuant to the Montana Rules of Civil Procedure.

(5) (a) Immediately upon the filing of a record with the department, the fact that a birth or death has occurred may be released to the public without restriction. Notwithstanding the restrictions provided in 50-15-121, complete birth records may be released to the public 30 years after the date of birth. The department shall adopt rules that provide for the continued safekeeping of the records.

(b) Upon the filing of a record of marriage with the clerk of the district court, information that may be released to the public without restriction is specifically limited to:

- (i) the names of the parties, the age of the parties, and their place of birth;
- (ii) the date and place of the marriage;
- (iii) the names and addresses of the parents of the parties;
- (iv) the name of the officiant; and
- (v) the type of ceremony.

(c) Any other information contained in a marriage license application that is not authorized to be disclosed under subsection (5)(b) is considered confidential and is subject to the disclosure limitations and penalties provided in 50-15-114.

(d) Notwithstanding the restrictions provided in 50-15-121 and this section, the information contained in a marriage license and marriage certificate may be released to the public 30 years after the date of the marriage.

(e) Upon the filing of a record of a dissolution of marriage with the clerk of the district court, that record may be released to the public without restriction unless designated confidential by the court. A record of dissolution of marriage designated confidential by the court may be provided to a federal, state,

or local government agency upon request when the record is used solely in the conduct of the agency's official duties.

(6) The department may provide the national center for health statistics or a successor agency with copies of records, reports, or data from the system of vital statistics that are required for national statistics. The department shall enter into an agreement with the center, indicating the scope of disclosure of information, as required by this chapter or rules implementing this chapter, concerning the use of records, reports, or data for statistical or research purposes. The agreement must set forth the financial support to be provided by the center for the collection, processing, and transmission of the records, reports, or data. Upon written request of the center, the department may approve, by amendment to the agreement, additional statistical or research uses of the records, reports, or data supplied under the agreement.

(7) Federal, state, and local governmental agencies may, subject to this chapter and rules implementing this chapter, upon request, be furnished copies of records or data from the system of vital statistics if the copies or data is used solely in the conduct of the agency's official duties. The department shall, upon request by a licensed adoption agency, provide a birth certificate and related records for purposes of adoption, termination of parental rights, custody actions, paternity actions, child support actions, social security eligibility determinations, or Indian tribal enrollment determinations.

(8) Subject to this chapter and rules implementing this chapter, the department may, by agreement, transmit copies of records and other reports required to be compiled by this chapter to offices of vital statistics outside this state when the records or reports concern residents of those jurisdictions or persons born in those jurisdictions. The agreement must specify the statistical and administrative purposes for which the records may be used, and the agreement must provide instructions concerning proper retention, confidentiality requirements, and disposition of the copies. Copies received by the department from offices of vital statistics in other states must be handled as provided for in this subsection.

History: En. Sec. 8, Ch. 515, L. 1995; amd. Sec. 14, Ch. 416, L. 1999; amd. Sec. 3, Ch. 91, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 91 in (5)(a) in first sentence after "occurred" deleted "or a record of marriage or dissolution of marriage"; inserted (5)(b) through (5)(e) regarding confidentiality and release of information in a marriage license application and record of dissolution of marriage; and made minor changes in style. Amendment effective October 1, 2001.

Preamble: The preamble attached to Ch. 91, L. 2001, provided: "WHEREAS, an opinion by the Attorney General, issued on March 23, 2000, 48 A.G. Op. 10, held that applications for marriage licenses should be treated as confidential records once they have been completed and filed with the Clerk of the District Court; and

WHEREAS, the same opinion interprets the intent of the Legislature in enacting sections 50-15-121 and 50-15-122, MCA, to allow general information about a marriage to be made public, while safeguarding the detailed background information about the bride and groom; and

WHEREAS, the opinion seeks to clarify who is entitled to receive marriage license application information that is not made available to the public."

Severability: Section 4, Ch. 91, L. 2001, was a severability clause.

1999 Amendment: Chapter 416 in two places in second sentence in (5) after "birth" deleted "or death"; and made minor changes in style. Amendment effective October 1, 1999.

1995 Statement of Intent: The statement of intent attached to Ch. 515, L. 1995, provided: "A statement of intent is required for this bill because the bill gives the department of health and environmental sciences [now department of public health and human services] authority to adopt administrative rules.

The legislature intends that the rules:

(1) address the process for establishing and maintaining a statewide system of vital statistics and vital records;

(2) define persons who may obtain copies of vital records and the showing necessary to obtain vital records;

(3) establish which persons may prepare or issue certified copies of certificates of birth or vital records;

(4) establish the process and scope of disclosure of information to the public and governmental agencies as well as adequate standards for security and confidentiality of vital records;

- (5) establish a system for preservation or disposal of vital records;
- (6) establish the process and guidelines for registration of births;
- (7) establish the process for establishing, maintaining, or dismissing applications for delayed certificates of birth;
- (8) establish forms necessary to track vital statistics by courts or other governmental entities;
- (9) establish a system of issuance and maintenance of certificates of birth following adoption, legitimation, or establishment of paternity;
- (10) establish a system for issuance and maintenance of records of dissolution or annulment of marriage; and
- (11) establish a system for the issuance and maintenance of certificates of adoption and annulment of adoption."

Severability: Section 23, Ch. 515, L. 1995, was a severability clause.

Effective Date: Section 24, Ch. 515, L. 1995, provided that this section is effective January 1, 1996.

Code Commissioner Change: Pursuant to sec. 1, Ch. 546, L. 1995, the Code Commissioner substituted Department of Public Health and Human Services for Department of Social and Rehabilitation Services.

Pursuant to sec. 2, Ch. 546, L. 1995, the Code Commissioner substituted Department of Public Health and Human Services for Department of Family Services.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Confidentiality of health care information, Title 50, ch. 16, part 5.

Administrative Rules

ARM 37.8.126 Access to records.

Attorney General's Opinions

Confidentiality of Marriage License Applications: Pursuant to 50-15-121 and this section, an application for a marriage license should be treated as a confidential record once the application is completed and filed with the Clerk of the District Court. Once a marriage is reported by the Department of Public Health and Human Services, the Department or the Clerk of the District Court may disclose to the public the record of marriage, consisting of the names of the bride and groom, the date and place of the marriage, the name of the officiant, and whether the ceremony was religious or civil. 48 A.G. Op. 10 (2000). See also 48 A.G. Op. 17 (2000), in which the Attorney General clarified 48 A.G. Op. 10 (2000), by holding that 48 A.G. Op. 10 (2000), applied to all marriage applications on file with a Clerk of the District Court, not to only applications filed after the date of that opinion. (See 2001 amendment.)

Right of Access to Sealed Original Birth Records: Considering the legislative history, 50-15-206, as amended in 1979, prohibited disclosure of illegitimacy of birth or information from which illegitimacy can be ascertained except upon court order. This conflicted with 50-15-304, which would allow an adopted illegitimately born person access to his or her sealed original birth records upon demand. Section 50-15-206(1)(a) was enacted as part of a 1979 amendment. Under 1-2-203, ". . . the new provisions are to be considered as having been enacted at the time of the amendment". Earlier statutes are controlled by later statutes when they conflict, so 50-15-206 controls. Additionally, when a specific statute conflicts with a general statute, the specific statute controls to the extent of any conflict. Under this rule of construction, 50-15-304 was considered the general statute dealing with the birth records of adopted persons, and 50-15-206(1)(a) was considered a more specific statute regulating disclosure of birth records of illegitimate adopted persons, the statute which controlled. Therefore, legitimately born adopted persons of legal age may have their sealed original birth records opened on demand while illegitimately born adopted persons may apply to the court for disclosure of their sealed original birth records. 38 A.G. Op. 62 (1980).

50-15-123. Preservation of vital records. To preserve vital records, the department may prepare typewritten, photographic, electronic, or other reproductions of certificates, vital records, or reports kept by the department. The reproductions when certified and approved by the department must be accepted as the original records. The department shall maintain original vital records intact and in their original form on file at the department.

History: En. Sec. 9, Ch. 515, L. 1995.

Compiler's Comments

Severability: Section 23, Ch. 515, L. 1995, was a severability clause.

Effective Date: Section 24, Ch. 515, L. 1995, provided that this section is effective January 1, 1996.

50-15-124. Content of certificates, records, and reports. (1) In order to promote and maintain nationwide uniformity in the system of vital statistics, the department, in the preparation of the forms of certificates, vital records, or reports required by this chapter or rules adopted under this chapter, may include the elements in forms and the forms recommended by the national center for health statistics for implementing a system of vital statistics.

(2) Each certificate, record, report, and other document required by this chapter must be prepared in a format approved by the department. All vital records must contain the date of filing.

(3) Information required in certificates, forms, records, or reports authorized by this chapter may be filed, verified, registered, and stored by photographic, electronic, or other means as prescribed by the department.

History: En. Sec. 10, Ch. 515, L. 1995.

Compiler's Comments

Severability: Section 23, Ch. 515, L. 1995, was a severability clause.

Effective Date: Section 24, Ch. 515, L. 1995, provided that this section is effective January 1, 1996.

Part 2 Birth

Part Cross-References

County Clerk to record births, 7-4-2613, 7-4-2619.

Part Administrative Rules

Title 37, chapter 8, subchapter 3, ARM Birth records.

50-15-201. Repealed. Sec. 20, Ch. 515, L. 1995.

History: En. Sec. 53, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4413.

50-15-202. Unattended birth. (1) If a birth is unattended and neither parent is able to prepare a birth certificate, the local registrar shall:

(a) secure information from any person having knowledge of the birth;

(b) prepare and file a birth certificate;

(c) within the time prescribed by the department, file a supplementary report furnishing information omitted from the original birth certificate if additional information is received.

(2) Birth certificates completed by a supplementary report may not be considered "delayed" or "amended".

History: En. Sec. 54, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4414; amd. Sec. 1, Ch. 139, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 139 in (2) at end substituted "amended" for "altered"; and made minor changes in style. Amendment effective October 1, 2009.

50-15-203. Child of unknown parentage. (1) A person who assumes custody of a child of unknown parentage shall immediately file with the local registrar a written report which shall constitute a birth certificate.

(2) The report shall contain:

- (a) the date and place of finding or assumption of custody;
- (b) sex, color or race, and approximate age of the child;
- (c) name and address of the person or institution with whom the child has been placed for care;
- (d) name given to the child by the finder or person who assumes custody.

(3) The place where the child was found or custody assumed shall be the place of birth.

(4) The date of birth shall be determined by approximation.

(5) If the child is identified and a regular birth certificate is found or obtained, the report shall be sealed and may be opened only by court order.

History: En. Sec. 55, Ch. 197, L. 1967; R.C.M. 1947, 69-4415.

50-15-204. Delayed or amended birth certificate. (1) (a) If a certificate of birth for a person born in this state has not been filed within 1 year of the birth, a delayed certificate of birth may be filed in accordance with rules adopted by the department. A delayed certificate of birth may not be registered until the requirements regarding facts pertaining to the delayed certificate, as specified by rule, have been met.

(b) A birth of a person in this state whose name has not been registered within 1 year after the birth must be registered on a delayed certificate of birth form. The delayed certificate must contain the date of registration and a summary statement of the information submitted to explain the delayed registration.

(c) A delayed certificate of birth may not be registered for a deceased person.

(d) The department may not register a delayed certificate of birth if an applicant for a delayed certificate of birth does not submit the minimum documentation required by rule for delayed registration or if the department has cause to question the validity or adequacy of the applicant's sworn statement or the documentation provided to establish the facts and the deficiencies are not corrected. The department shall advise the applicant of the reasons for the refusal to register the delayed certificate of birth. The department shall advise the applicant of the right to seek an order from a court of competent jurisdiction to obtain registration of the delayed certificate of birth as provided in 50-15-222.

(e) The department may, by rule, provide for the dismissal of an application for registration of a delayed certificate of birth that is not actively pursued.

(2) The department or its designee may amend a birth, death, or fetal death certificate upon submitting proof as required by the department.

(3) The department shall adopt rules establishing the circumstances under which vital records may be corrected or amended and the procedure to correct or amend those records.

(4) If a birth certificate is amended by the department after filing, the certificate must show the date of the amendment and the mark "amended". A summary statement of the evidence in support of the amendment must be endorsed on the certificate.

(5) The probative value of a "delayed" or "amended" certificate of birth is determined by the judicial or administrative body before whom the certificate is offered as evidence.

History: (1), (2)En. Sec. 56, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; Sec. 69-4416, R.C.M. 1947; (3)En. Sec. 57, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; Sec. 69-4417, R.C.M. 1947; (4)En. Sec. 59, Ch. 197, L. 1967; Sec. 69-4419, R.C.M. 1947; R.C.M. 1947, 69-4416, 69-4417, 69-4419; amd. Sec. 12, Ch. 515, L. 1995; amd. Sec. 2, Ch. 139, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 139 in (4) in two places and in (5) substituted "amended" for "altered" and in (4) in two places substituted "amendment" for "alteration". Amendment effective October 1, 2009.

1995 Amendment: Chapter 515 substituted (1)(a) through (1)(e) for sentence that provided that after the time prescribed by the Department, a person born in this state could file a birth certificate upon submitting proof as required by the Department or the court; in (2) substituted "The department or its designee" for "A person"; inserted (3) requiring adoption of rules; in (4) deleted references to delayed filings of birth certificates; and made minor changes in style. Amendment effective January 1, 1996.

Severability: Section 23, Ch. 515, L. 1995, was a severability clause.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Administrative Rules

ARM 37.8.303 Delayed birth certificate.

50-15-205. Repealed. Sec. 20, Ch. 515, L. 1995.

History: En. Sec. 58, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4418.

50-15-206. Repealed. Sec. 20, Ch. 515, L. 1995.

History: En. Sec. 62, Ch. 197, L. 1967; R.C.M. 1947, 69-4422; amd. Sec. 2, Ch. 178, L. 1979; amd. Sec. 67, Ch. 609, L. 1987; amd. Sec. 2, Ch. 118, L. 1989.

50-15-207. New birth certificate upon proof of legitimation. Upon receipt of proof of legitimation, the department shall prepare a new birth certificate in the new name of the person legitimated. Evidence upon which the new certificate is based and the original birth certificate shall be sealed and may be opened only upon court order. In case of legitimation, the department shall substitute records in the way provided in 50-15-304(2) for records of adoption.

History: En. Sec. 63, Ch. 197, L. 1967; amd. Sec. 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4423.

50-15-208. Birth registration for stillbirth — requirements. (1) The department shall establish a certificate of birth resulting in a stillbirth on a form adopted by the department when the birth results in a stillbirth. Upon request by a parent, a certificate of birth resulting in a stillbirth must be filed in addition to the fetal death certificate provided for in 50-15-403. Upon request, a certificate of birth resulting in a stillbirth must be provided to a parent.

(2) A certificate of birth resulting in a stillbirth may be filed by:

(a) the physician, the physician's designee, or the direct-entry midwife licensed pursuant to Title 37, chapter 27, in attendance at a stillbirth;

(b) the person in attendance at a stillbirth;

(c) the father or the mother;

(d) in the absence of the father and the inability of the mother, the person in charge of the premises where the stillbirth occurred; or

(e) the local registrar if 50-15-202 applies.

(3) The department shall adopt rules providing for:

(a) the time by which the certificate of birth resulting in a stillbirth must be filed after the stillbirth;

(b) the evidence required to establish the facts of a stillbirth; and

(c) the information required on a certificate of birth resulting in a stillbirth.

History: En. Sec. 1, Ch. 474, L. 2007.

Compiler's Comments

Effective Date: Section 4, Ch. 474, L. 2007, provided that this section is effective January 1, 2008.

50-15-209 reserved.

50-15-210. Paternity acknowledgment. (1) Upon the birth of a child to a mother unmarried at the time of birth, the administrator or person in charge of a hospital or other institution in which the birth occurs or the midwife who attends the birth shall:

(a) provide an opportunity for the child's mother and alleged father to complete an acknowledgment of paternity pursuant to 40-6-105;

(b) provide written information, furnished by the department of public health and human services, describing the rights and responsibilities of paternity, the benefits of having a child's paternity established, and the child's right to receive support; and

(c) forward a copy of an acknowledgment signed by the mother and the father to the department.

(2) The hospital, institution, or midwife is entitled to reimbursement for reasonable costs of obtaining an acknowledgment. The department of public health and human services shall establish the amount of reasonable costs, not to exceed the amount for which federal financial participation is available, and the procedures for claiming reimbursement.

(3) Hospitals, institutions, and midwives shall use forms prescribed by the department of public health and human services for the acknowledgment of paternity.

(4) If the child is born in this state, the department of public health and human services shall file an acknowledgment received under 40-6-105 or this section with the child's certificate of birth. If the child was not born in this state or if an acknowledgment received under 40-6-105 or this section cannot be filed with the child's certificate of birth, the department shall file the acknowledgment in an acknowledgment registry created and maintained for that purpose.

History: En. Sec. 2, Ch. 523, L. 1993; amd. Sec. 11, Ch. 70, L. 1995; amd. Sec. 91, Ch. 552, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 552 inserted (4) requiring the Department to file an acknowledgment received under 40-6-105 with the birth certificate if a child is born in this state and providing that if a child is not born in this state or if a 40-6-105 acknowledgment cannot be filed with the birth certificate, the Department shall file the acknowledgment in an acknowledgment registry created and maintained for that purpose; and made minor changes in style. Amendment effective July 1, 1997.

1995 Amendment: Chapter 70 in (1) substituted "mother" for "woman"; in (1)(a) and (1)(b) substituted "paternity" for "parentage"; in (1)(b) and (2), after "department", inserted "of social and rehabilitation services"; and in second sentence of (2), after "shall establish", deleted "by rule". Amendment effective July 1, 1995.

Code Commissioner Change: Pursuant to sec. 1, Ch. 546, L. 1995, the Code Commissioner substituted Department of Public Health and Human Services for Department of Social and Rehabilitation Services.

Cross-References

Establishment of paternity — jurisdiction and venue, 40-5-231.

Establishment of paternity — notice of paternity determination, 40-5-232.

Establishment of paternity — administrative hearing, 40-5-233.

Paternity genetic tests, 40-5-234.

Effect of order establishing paternity, 40-5-235.

Referral of paternity issue to District Court, 40-5-236.

District Court paternity proceedings, 40-5-237.

50-15-211 through 50-15-220 reserved.

50-15-221. Birth registration. (1) A certificate of birth must be filed as specified in this section with the department for each live birth that occurs in this state. Unless otherwise directed by the department, the certificate must be filed within the time prescribed by the department by rule after the birth. The birth certificate must be registered if it has been completed and filed in accordance with this section and rules adopted to implement this section.

(2) If a birth occurs in a health care facility, the birth certificate must be completed and filed by the attending physician or the physician's designee.

(3) If a birth occurs in or en route to a health care facility, the person in charge of the facility or the person's authorized designee shall obtain the personal data concerning the newborn child, prepare the certificate, and certify that the child was born alive at the place, at the time, and on the date stated. Certification may be by signature or by an approved electronic process. The person referenced in this subsection shall file the certificate as directed in subsection (1). The physician or other person in attendance at the birth shall provide the medical information required by the certificate within 72 hours after the birth.

(4) The department shall, by rule, determine what evidence may be required to establish the facts of birth if the birth occurs at a place other than a health care facility. In accordance with rules promulgated by the department, the certificate must be prepared and filed by one of the following persons in the indicated order of priority in subsections (4)(a) through (4)(e):

(a) the physician or the physician's designee or a midwife licensed pursuant to Title 37, chapter 27, in attendance at or immediately after the birth;

(b) a person in attendance at or immediately after the birth;

(c) the father or the mother;

(d) in the absence of the father and the inability of the mother, the person in charge of the premises where the birth occurred; or

(e) the local registrar, if 50-15-202 applies.

(5) When a birth occurs on a moving conveyance within the United States and the newborn child is first removed from the conveyance in this state, the birth must be registered in this state by a person listed in subsection (4) and the place where the child is first removed from the conveyance is considered the place of birth. When a birth occurs on a moving conveyance while in international waters or air space or in a foreign country or its air space and the child is first removed from the conveyance in this state, the birth must be registered by a person listed in subsection (4) in this state, but the certificate must indicate the actual place of birth insofar as the place can be determined.

(6) For the purposes of birth registration, the woman who gives birth to the child is considered to be the mother, unless otherwise provided by state law or determined by a court of competent jurisdiction prior to the filing of the birth certificate. Information about the father must be entered as provided in subsection (7).

(7) (a) If the mother was married at the time of conception or birth or between conception and birth, the name of the husband must be entered on the certificate as the father of the child, unless:

(i) other paternity has been determined by a court of competent jurisdiction;

(ii) the mother and the husband execute joint or separate affidavits attesting that the husband is not the father of the child. Affidavits must be notarized, and signatures of the mother and of the husband must be individually notarized on any joint affidavit. If affidavits are filed, information about the father must be omitted from the certificate.

(iii) the mother executes an affidavit attesting that the husband is not the father and names a putative father, the putative father executes an affidavit attesting paternity, and the husband executes an affidavit denying paternity. Affidavits may be joint or individual or a combination of joint and individual affidavits. Each signature on an affidavit must be individually notarized. If all affidavits are filed, the putative father must be shown as the father on the certificate.

(b) If the mother was not married at the time of conception or birth or between conception and birth, the name of the father may not be entered on the certificate without an affidavit of paternity signed by the mother and the person to be named as the father.

(c) If paternity of a child is determined by a court of competent jurisdiction, the name of the father and surname of the child must be entered on the certificate of birth in accordance with the finding and order of the court.

(d) If the father is not named on the certificate of birth, information about the father may not be entered on the certificate.

(e) Affidavits required under this subsection (7) must be filed with the department.

(8) Either parent of the child, or another informant, shall verify the accuracy of the personal data to be entered on the certificate in order to permit the filing of the certificate within the time prescribed in subsection (1).

(9) A certificate of birth filed after the time prescribed in subsection (1) but within 1 year from the date of birth must be registered by the natural parents, the adoptive parents, or the person having legal custody of the child, on the standard form of live birth certificate in the manner prescribed in this section and by rule. The certificate may not be designated as delayed. The department may require additional evidence in support of the facts of birth.

History: En. Sec. 11, Ch. 515, L. 1995.

Compiler's Comments

1995 Statement of Intent: The statement of intent attached to Ch. 515, L. 1995, provided: "A statement of intent is required for this bill because the bill gives the department of health and

environmental sciences [now department of public health and human services] authority to adopt administrative rules.

The legislature intends that the rules:

- (1) address the process for establishing and maintaining a statewide system of vital statistics and vital records;
- (2) define persons who may obtain copies of vital records and the showing necessary to obtain vital records;
- (3) establish which persons may prepare or issue certified copies of certificates of birth or vital records;
- (4) establish the process and scope of disclosure of information to the public and governmental agencies as well as adequate standards for security and confidentiality of vital records;
- (5) establish a system for preservation or disposal of vital records;
- (6) establish the process and guidelines for registration of births;
- (7) establish the process for establishing, maintaining, or dismissing applications for delayed certificates of birth;
- (8) establish forms necessary to track vital statistics by courts or other governmental entities;
- (9) establish a system of issuance and maintenance of certificates of birth following adoption, legitimation, or establishment of paternity;
- (10) establish a system for issuance and maintenance of records of dissolution or annulment of marriage; and
- (11) establish a system for the issuance and maintenance of certificates of adoption and annulment of adoption."

Severability: Section 23, Ch. 515, L. 1995, was a severability clause.

Effective Date: Section 24, Ch. 515, L. 1995, provided that this section is effective January 1, 1996.

Cross-References

Adoption of publication of rules, Title 2, ch. 4, part 3.

Administrative Rules

ARM 37.8.301 Certificate of birth.

50-15-222. Judicial birth facts procedure. (1) If the department declines to register a certificate of birth under the provisions of 50-15-204 or 50-15-221, a petition signed and sworn to by the petitioner may be filed with the district court, seeking an order establishing a record of the date and place of the birth and the parentage of the person whose birth is to be registered.

(2) The petition must be made on a form adopted or approved by the department and must allege:

- (a) that the person for whom a certificate of birth is sought was born in this state;
- (b) that a certificate of birth of the person cannot be found at the department or at the office of the clerk and recorder;
- (c) that diligent efforts by the petitioner have failed to obtain the evidence to establish entitlement to a certificate of birth required in accordance with this chapter and rules adopted pursuant to this chapter;
- (d) that the department has declined to file a certificate of birth; and
- (e) other allegations as may be required by law.

(3) The petition must be accompanied by all documentary evidence that was submitted to the department in support of the applicant's registration and by a statement of the reasons why the department declined to register the certificate of birth.

(4) The district court shall fix a time and place for hearing the petition and shall give the department 30 days' notice of the hearing. The department through its authorized representative shall appear and testify as a witness in the proceeding if determined necessary by the court.

(5) If the district court finds, from the evidence presented, that the person for whom a certificate of birth is sought was born in this state, it shall make findings as to the date and place of birth, parentage, and other relevant facts and shall issue an order establishing the certificate of birth. The order must

include the findings and birth data to be registered, a description of the evidence presented, and the date of the court's action.

(6) The clerk of the court shall forward the order referred to in subsection (5) to the department not later than the 10th calendar day of the month following the month in which it was entered. The order must be registered by the department and constitutes the court-ordered certificate of birth.

History: En. Sec. 13, Ch. 515, L. 1995.

Compiler's Comments

Severability: Section 23, Ch. 515, L. 1995, was a severability clause.

Effective Date: Section 24, Ch. 515, L. 1995, provided that this section is effective January 1, 1996.

50-15-223. Certificates of birth following adoption, legitimation, or determination or acknowledgment of paternity. (1) The department shall establish a new certificate of birth for a person born in this state when the department receives the following:

(a) a certificate of adoption, as provided in 50-15-311, a certificate of adoption prepared and filed in accordance with the laws of another state or foreign country, or a certified copy of the decree of adoption, together with the information necessary to identify the original certificate of birth and to establish a new certificate of birth; or

(b) a request that a new certificate be established if the request shows that:

(i) a district court, court of appropriate jurisdiction in another state, or administrative agency in this state or another state with appropriate jurisdiction has determined the paternity of the person and information necessary to identify the original certificate of birth is provided; or

(ii) both parents have acknowledged the paternity of the person and request that the surname be changed from that shown on the original certificate.

(2) The date of birth and the city and county of birth must be stated in the newly established certificate of birth. The department shall substitute the new certificate of birth for the original certificate of birth in the files. The original certificate of birth and the evidence of adoption, legitimation, court determination of paternity, or paternity acknowledgment are only subject to inspection, except upon order of a district court, as provided by rule, as provided in Title 42, chapter 6, part 1, or as otherwise provided by state law.

(3) Upon receipt of a report of an amended decree of adoption, the department shall amend the certificate of birth as provided in rules adopted by the department.

(4) Upon receipt of a report or decree of annulment of adoption, the department shall restore the original certificate of birth issued before the adoption to its place in the files and the certificate of birth issued upon adoption and evidence pertaining to the adoption proceeding may not be open to inspection, except:

(a) as provided in Title 42, chapter 6, part 1;

(b) upon order of a district court; or

(c) as provided by rule adopted by the department.

(5) Upon written request of both parents and receipt of a sworn acknowledgment and other credible evidence of paternity signed by both parents of a child born outside of marriage, the department shall reflect the paternity on the child's certificate of birth if paternity is not already shown on the certificate of birth.

(6) If a certificate of birth is not on file for the adopted child for whom a new certificate of birth is to be established under this section and the date and place of birth have not been determined in the adoption or paternity proceedings pertaining to the child, a delayed certificate of birth must be filed with the department, as provided in 50-15-204, before a new certificate of birth may be established. The new certificate of birth must be prepared on a form prescribed by the department.

(7) When a new certificate of birth is established by the department, the department shall direct that all copies of the original certificate of birth in the custody of any other custodian of vital records in this state be forwarded immediately to the department.

(8) (a) The department shall, upon request of the adopting parents, prepare and register a certificate of birth in this state for a person who was born in a foreign country and adopted through a district court in this state.

(b) The certificate of birth must be established by the department upon receipt of a certificate of adoption, conforming to the requirements of 50-15-311, from the court that reflects entry of an order of adoption, proof of the date and place of the child's birth, and a request for the establishment of a certificate of birth from the court, the adopting parents, or the adopted person, if the person is 18 years of age or older.

(c) The certificate of birth must be labeled "Certificate of Foreign Birth" and must contain the actual country of birth. A statement must be included on the certificate indicating that it is not evidence of United States citizenship for the child for whom it is issued.

(d) After registration of the certificate of birth in the new name of the adopted person, the department shall seal and file the certificate of adoption, which is not subject to inspection, except upon order of the district court, as provided by rule, or as otherwise provided by state law.

(9) The department may promulgate rules necessary to implement this section.

History: En. Sec. 14, Ch. 515, L. 1995; amd. Sec. 169, Ch. 480, L. 1997; amd. Sec. 92, Ch. 552, L. 1997; amd. Sec. 2, Ch. 149, L. 2005; amd. Sec. 4, Ch. 162, L. 2015.

Compiler's Comments

2015 Amendment: Chapter 162 inserted (4)(a) referencing Title 42, chapter 6, part 1; and made minor changes in style. Amendment effective October 1, 2015.

2005 Amendment: Chapter 149 in (7) after second "department" substituted "shall" for "may", near end after "state" deleted "either be sealed from inspection or", after "forwarded" inserted "immediately", and at end after "department" deleted "for sealing from inspection"; in (8)(a) after "country" deleted "who is not a citizen of the United States"; and made minor changes in style. Amendment effective April 8, 2005.

1997 Amendments: Chapter 480 in third sentence in (2), after "acknowledgment", substituted "are only subject" for "may not be subject" and after "rule" inserted "as provided in Title 42, chapter 6, part 1".

Chapter 552 in (1)(b)(i) inserted "court of appropriate jurisdiction in another state, or administrative agency in this state or another state with appropriate jurisdiction" and inserted "and information necessary to identify the original certificate of birth is provided". Amendment effective July 1, 1997.

Severability: Section 172, Ch. 480, L. 1997, was a severability clause.

1995 Statement of Intent: The statement of intent attached to Ch. 515, L. 1995, provided: "A statement of intent is required for this bill because the bill gives the department of health and environmental sciences [now department of public health and human services] authority to adopt administrative rules.

The legislature intends that the rules:

(1) address the process for establishing and maintaining a statewide system of vital statistics and vital records;

(2) define persons who may obtain copies of vital records and the showing necessary to obtain vital records;

(3) establish which persons may prepare or issue certified copies of certificates of birth or vital records;

(4) establish the process and scope of disclosure of information to the public and governmental agencies as well as adequate standards for security and confidentiality of vital records;

(5) establish a system for preservation or disposal of vital records;

(6) establish the process and guidelines for registration of births;

(7) establish the process for establishing, maintaining, or dismissing applications for delayed certificates of birth;

(8) establish forms necessary to track vital statistics by courts or other governmental entities;

(9) establish a system of issuance and maintenance of certificates of birth following adoption, legitimation, or establishment of paternity;

(10) establish a system for issuance and maintenance of records of dissolution or annulment of marriage; and

(11) establish a system for the issuance and maintenance of certificates of adoption and annulment of adoption."

Severability: Section 23, Ch. 515, L. 1995, was a severability clause.

Effective Date: Section 24, Ch. 515, L. 1995, provided that this section is effective January 1, 1996.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 3 Marriage and Adoption

Part Cross-References

County Clerk to maintain index of marriage certificates, 7-4-2619.

Marriage license requirements, Title 40, ch. 1, part 2.

Declaration of marriage without solemnization, 40-1-311.

Registration of marriages, 40-1-321.

Certificates of marriage and records of certificates as evidence of marriage, 40-1-322.

Proof of solemnized marriage when no record, 40-1-323.

Part Attorney General's Opinions

Marriage License Application — Disclosure of Vital Statistics: An applicant for a marriage license can be required to disclose information concerning his or her dependents, race, education, and support obligations. 37 A.G. Op. 159 (1978).

50-15-301. Marriage certificates. Before the 10th day of each month, each clerk of a district court shall report marriage certificates filed during the preceding calendar month to the department. Reports must be on forms and contain information prescribed by the department.

History: En. Sec. 72, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4432; amd. Sec. 7, Ch. 228, L. 1981; amd. Sec. 14, Ch. 13, Sp. L. August 2002; amd. Sec. 6, Ch. 114, L. 2005.

Compiler's Comments

2005 Amendment: Chapter 114 deleted former third and fourth sentences that read: "The applicant for a marriage license shall pay a recording fee of 25 cents to the officer authorized to issue the marriage license. Beginning July 1, 2003, the recording fee must be forwarded to the state for deposit in the state general fund." Amendment effective July 1, 2005.

2002 Amendment: Chapter 13 inserted last sentence relating to deposit in the state general fund; and made minor changes in style. Amendment effective August 16, 2002.

1981 Amendment: Substituted "10th day" for "16th day" near the beginning of the section.

Saving Clause: Section 11, Ch. 228, L. 1981, was a saving section.

Severability: Section 12, Ch. 228, L. 1981, was a severability section.

Cross-References

Marriage licenses, Title 40, ch. 1, part 2.

Administrative Rules

ARM 37.8.601 Marriage applications and licenses.

Attorney General's Opinions

Confidentiality of Marriage License Applications: Pursuant to 50-15-121 and 50-15-122, an application for a marriage license should be treated as a confidential record once the application is completed and filed with the Clerk of the District Court. Once a marriage is reported by the Department of Public Health and Human Services, the Department or the Clerk of the District Court may disclose to the public the record of marriage, consisting of the names of the bride and groom, the date and place of the marriage, the name of the officiant, and whether the ceremony was religious or civil. 48 A.G. Op. 10 (2000). See also 48 A.G. Op. 17 (2000), in which the Attorney General clarified 48 A.G. Op. 10 (2000), by holding that 48 A.G. Op. 10 (2000), applied to all marriage applications on file with a Clerk of the District Court, not to only applications filed after the date of that opinion. (See 2001 amendment to 50-15-122.)

Declaration of Marriage Without Solemnization — No Fee Required: A marriage license is not a requirement for a valid marriage by written declaration. No fee may be charged for filing the declaration of marriage without solemnization. (Annotator's note: Chapter 12, L. 1983, established a fee for filing a declaration.) 37 A.G. Op. 12 (1977).

50-15-302. Clerk to report decree of dissolution or declaration of invalidity of marriage. (1) At the same time a decree of dissolution or declaration of invalidity of marriage is filed, the clerk of court shall prepare a report to the department on the form prescribed by the department. Parties to the action or their attorneys shall supply the clerk with necessary information.

(2) The report must include the:

- (a) name, age, birthplace, residence, race or color, and occupation of each party;
- (b) number, date, and place of any previous marriage of either party;
- (c) number of children under 18 years of age in custody of either party and residing with the party;
- (d) grounds for the action;
- (e) number of the cause of action;
- (f) county and judicial district where the action is filed; and
- (g) date of judgment and the party that was granted it.

History: En. Sec. 74, Ch. 197, L. 1967; amd. Secs. 107, 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4434; amd. Sec. 4, Ch. 37, L. 1979; amd. Sec. 1822, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Declaration of invalidity, Title 40, ch. 1, part 4.
Dissolution of marriage, Title 40, ch. 4, part 1.

50-15-303. Certificates of dissolution of marriage or declaration of invalidity of marriage. Before the 10th day of each month, the clerk of the court shall prepare and forward to the department a certificate for each decree of dissolution of marriage or declaration of invalidity of marriage that became final during the preceding calendar month. Certificates must be on forms prescribed by the department.

History: En. Sec. 73, Ch. 197, L. 1967; amd. Secs. 107, 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4433; amd. Sec. 5, Ch. 37, L. 1979; amd. Sec. 8, Ch. 228, L. 1981; amd. Sec. 15, Ch. 515, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 515 deleted references to certificates of adoption and of annulment of adoption; and made minor changes in style. Amendment effective January 1, 1996.

Severability: Section 23, Ch. 515, L. 1995, was a severability clause.

1981 Amendment: Substituted "10th day" for "16th day" near the beginning of the section.

Saving Clause: Section 11, Ch. 228, L. 1981, was a saving section.

Severability: Section 12, Ch. 228, L. 1981, was a severability section.

Cross-References

Declaration of invalidity, Title 40, ch. 1, part 4.
Termination of marriage, Title 40, ch. 4.

50-15-304. Substitute birth certificate for person adopted. (1) The procedure for issuing a substitute birth certificate for a person born in Montana and adopted is as follows:

(a) Before the 16th day of the month following the order of adoption, the clerk of the district court shall forward a certified copy of the final order of adoption to the department or the department may accept a certified copy of a final order of adoption from a court of competent jurisdiction of another state of the United States or a tribal court of competent jurisdiction.

(b) The department shall prepare a substitute certificate containing:

- (i) the new name of the adopted person;
- (ii) the true date and place of birth and the sex of the adopted person;
- (iii) statistical facts concerning the adoptive parents in place of the natural parents;
- (iv) the words "department of public health and human services" substituted for the words "attendant's own signature"; and
- (v) dates of recording as shown on the original birth certificate.

(2) The procedure for recording a substitute birth certificate for a person born in Montana and adopted is as follows:

(a) The department shall send copies of the substitute birth certificate to the local registrar and to the county clerk and recorder.

(b) The local registrar and county clerk and recorder shall immediately enter the substitute birth certificate in their files and forward copies of the original birth record to the department.

(c) The department shall seal original birth records and open them only as provided in 50-15-223(2).

(3) On receipt of a certified copy of a court order annulling an adoption, the department shall restore the original birth certificate to its place in its files and notify the local registrar and county clerk and recorder.

History: (1)En. Sec. 60, Ch. 197, L. 1967; amd. Sec. 52, Ch. 349, L. 1974; amd. Sec. 1, Ch. 162, L. 1977; Sec. 69-4420, R.C.M. 1947; (2), (3)En. Sec. 61, Ch. 197, L. 1967; amd. Sec. 53, Ch. 349, L. 1974; Sec. 69-4421, R.C.M. 1947; R.C.M. 1947, 69-4420, 69-4421; amd. Sec. 9, Ch. 228, L. 1981; amd. Sec. 105, Ch. 418, L. 1995; amd. Sec. 282, Ch. 546, L. 1995; amd. Sec. 3, Ch. 149, L. 2005.

Compiler's Comments

2005 Amendment: Chapter 149 in (2)(c) after "only" substituted "as provided in 50-15-223(2)" for "on order of a court". Amendment effective April 8, 2005.

1995 Amendments: Chapter 418 in (1)(b)(iv) substituted "'department of public health'" for "'department of health and environmental sciences'"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in (1)(b)(iv) substituted "'department of public health and human services'" for "'department of health and environmental sciences'". Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1981 Amendment: Deleted "on demand of the adopted person if of legal age or" following "open them only" in (2)(c).

Saving Clause: Section 11, Ch. 228, L. 1981, was a saving section.

Severability: Section 12, Ch. 228, L. 1981, was a severability section.

Cross-References

Office of County Clerk, Title 7, ch. 4, part 26.

Attorney General's Opinions

Right of Access to Sealed Original Birth Records: Considering the legislative history, 50-15-206 (now repealed), as amended in 1979, prohibits disclosure of illegitimacy of birth or information from which illegitimacy can be ascertained except upon court order. This conflicts with this section, which would allow an adopted illegitimately born person access to his or her sealed original birth records upon demand. Section 50-15-206(1)(a) (now repealed) was enacted as part of a 1979 amendment to that section. Under 1-2-203, ". . . the new provisions are to be considered as having been enacted at the time of the amendment". Earlier statutes are controlled by later statutes when they conflict, so 50-15-206(1)(a) (now repealed) controls. Additionally, when a specific statute conflicts with a general statute, the specific statute controls to the extent of any conflict. Under this rule of construction, this section was considered the general statute dealing with the birth records of adopted persons, and 50-15-206(1)(a) (now repealed) was considered a more specific statute regulating disclosure of birth records of illegitimate adopted persons, the statute which controlled. Therefore, legitimately born adopted persons of legal age may have their sealed original birth records opened on demand while illegitimately born adopted persons may apply to the court for disclosure of their sealed original birth records. 38 A.G. Op. 62 (1980).

50-15-305 through 50-15-310 reserved.

50-15-311. Certificates of adoption or annulment of adoption — report of amended or annulled adoption decree. (1) For each adoption decreed by a district court, the decree must require the clerk of the court to prepare a certificate of adoption on a form prescribed and furnished by the department. The certificate of adoption must include facts that are necessary to locate and identify the date and place of birth of the adopted person or, in the case of a person who was born in a foreign country, evidence from sources determined to be reliable by the district court as to the date and place of birth of the person. The certificate of adoption must also contain information necessary to establish a new certificate of birth for the person adopted and must identify the order of adoption. The clerk of the court shall certify the certificate of adoption.

(2) Information necessary for the clerk of the court to prepare the certificate of adoption must be furnished, by each petitioner for adoption on a form prescribed by the department, at the time that the petition for adoption is filed. A person or agency having knowledge of facts, as described in subsection (1), may be required by the court to supply the court with information necessary to complete the certificate of adoption. The district court may make the provision of the information for the preparation of a certificate of adoption a prerequisite to the issuance of a final decree.

(3) Whenever an adoption decree is amended or annulled, the clerk of the court shall prepare a report. The report must include the facts that are necessary to identify the original certificate of adoption and the facts amended in the adoption decree that are necessary to properly amend the birth record.

(4) No later than the 16th day of each calendar month or more frequently, as directed by the department, the clerk of the court shall forward to the department certificates of adoption, reports of annulment of adoption, and amendments of decrees of adoption that were entered in the preceding month, together with any related reports required by the department.

(5) When the department receives a certificate of adoption, report of annulment of adoption, or amendment of a decree of adoption for a person born outside this state, the department shall forward the certificate, report, or amendment to the state registrar or the agency charged with registering vital statistics in the state where the person was born.

(6) If the birth of an adopted child occurred in a foreign country and the adopted child was not a citizen of the United States at the time of birth, the department shall prepare a "Certificate of Foreign Birth" as required by 50-15-223. If the adopted child was born in Canada, the department shall send a copy of the certificate of adoption, report of annulment of adoption, or amendment of a decree of adoption to the appropriate registration authority in Canada.

(7) If the adopted child born in a foreign country was a citizen of the United States at the time of birth, the department may not prepare a "Certificate of Foreign Birth" and shall notify the adoptive parents of the procedures for obtaining a revised certificate of birth for their child through the United States department of state.

(8) A deceased person cannot be adopted.

History: En. Sec. 16, Ch. 515, L. 1995.

Compiler's Comments

Severability: Section 23, Ch. 515, L. 1995, was a severability clause.

Effective Date: Section 24, Ch. 515, L. 1995, provided that this section is effective January 1, 1996.

Part 4 Death

Part Cross-References

Office of County Coroner, Title 7, ch. 4, part 29.

Part Administrative Rules

Title 37, chapter 8, subchapter 8, ARM Death records.

50-15-401. Repealed. Sec. 3, Ch. 118, L. 1997.

History: En. Sec. 64, Ch. 197, L. 1967; R.C.M. 1947, 69-4424(1); amd. Sec. 1, Ch. 502, L. 1989.

50-15-402. Copy to be forwarded to deceased's county of residence. If a state resident dies outside the county of residence, the clerk and recorder shall send a certified copy of the death certificate to the clerk and recorder of the deceased's county of residence. The copy must be considered the same as the original.

History: En. Sec. 64, Ch. 197, L. 1967; R.C.M. 1947, 69-4424(2); amd. Sec. 1823, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Residence — rules for determining, 1-1-215.

Office of County Clerk, Title 7, ch. 4, part 26.

50-15-403. Preparation and filing of death or fetal death certificate. (1) A person in charge of disposition of a dead body or fetus that weighs at least 350 grams at death or, if the weight is unknown, has reached 20 completed weeks of gestation at death shall obtain personal data on the deceased, including the deceased's social security number, if any, or, in the case of a fetal death, on the parents that is required by the department from persons best qualified to supply the data and enter it on the death or fetal death certificate.

(2) The person in charge of disposition of the dead body or fetus shall present the death certificate to the certifying physician, the certifying advanced practice registered nurse, or the coroner having jurisdiction for medical certification of the cause of death. The medical certification must be completed by the physician, the advanced practice registered nurse, or the coroner within the timeframe established by the department by rule. The person in charge of disposition shall obtain the completed certification of the cause of death from the physician, the advanced practice registered nurse, or the coroner and shall, within the time that the department may prescribe by rule, file the death or fetal death certificate with the local registrar in the registration area where the death occurred or, if the place of death is unknown, where the dead body was discovered.

(3) If a dead body is found in this state but the place of death is unknown, the place where the body is found must be shown as the place of death on the death certificate. If the date of death is unknown, then the approximate date must be entered on the certificate. If the date cannot be approximated, the date that the body was found must be entered as the date of death, and the certificate must indicate that fact.

(4) When a death occurs in a moving vehicle, as defined in 45-2-101, in the United States and the body is first removed from the vehicle in this state, the death must be registered in this state and the place where the body is first removed is considered the place of death. When a death occurs in a moving vehicle while in international air space or in a foreign country or its air space and the body is first removed from the vehicle in this state, the death must be registered in this state, but the actual place of death, insofar as it can be determined, must be entered on the death certificate.

History: En. Sec. 65, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-4425; amd. Sec. 28, Ch. 7, L. 1979; amd. Sec. 3, Ch. 287, L. 1993; amd. Sec. 17, Ch. 515, L. 1995; amd. Sec. 2, Ch. 118, L. 1997; amd. Sec. 93, Ch. 552, L. 1997; amd. Sec. 2, Ch. 27, L. 1999; amd. Sec. 2, Ch. 258, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 258 in (2) in first sentence after "physician" inserted "the certifying advanced practice registered nurse" and in second and third sentences inserted references to advanced practice registered nurses. Amendment effective October 1, 2001.

1999 Amendment: Chapter 27 in (1) after "on the deceased" inserted ", including the deceased's social security number, if any". Amendment effective January 1, 2001, unless contingency occurs. The codifier has bracketed the amendment.

Effective Date — Contingent Termination: Section 3(2), Ch. 27, L. 1999, provided: "(2) [Section 2] [this section] is effective January 1, 2001, unless prior to that date the director of the department of public health and human services certifies to the governor and the secretary of state in writing that the federal government has granted this state an exemption from the requirement to have a social security number on a death certificate and the exemption covers the period January 1, 2001, through July 1, 2001, in

which case [section 2] [this section] is void." An exemption was not received by January 1, 2001, so the previously bracketed language contained in [section 2] referring to a person's social security number became effective.

1997 Amendments: Chapter 118 in (2) inserted second sentence concerning completion of medical certification and at end of third sentence inserted "or, if the place of death is unknown, where the dead body was discovered"; inserted (3) concerning dead body found in the state where place of death is unknown; inserted (4) concerning death occurring in a moving vehicle; and made minor changes in style.

Chapter 552 in (1) inserted "including the deceased's social security number, if any". Amendment effective July 1, 1997. Amendment terminated April 24, 1998, pursuant to section 104(4)(d), Ch. 552, L. 1997.

Contingent Termination — Request for Federal Exemptions: Section 104, Ch. 552, L. 1997, contained the following contingent termination provisions and order that the Department of Public Health and Human Services seek federal exemptions:

"(1) [Sections 9, 11, 22 through 24, 93, and 95] [37-1-307, 40-1-107, 40-4-105, 40-5-922, 40-5-924, 50-15-403, and 61-5-107] and the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116] terminate on the date of the suspension if the federal government suspends federal payments to this state for this state's child support enforcement program and for this state's program relating to temporary assistance to needy families because of this state's failure to enact law as required by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(2) [Sections 9, 11, 22 through 24, 93, and 95] [37-1-307, 40-1-107, 40-4-105, 40-5-922, 40-5-924, 50-15-403, and 61-5-107] and the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116] terminate on the date that a final decision is rendered in federal court invalidating the child support provisions of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(3) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that one of the following provisions is no longer required by federal law because of repeal of or amendment to federal statutes that require that provision, the provision terminates on the date the certification takes effect:

(a) [section 9] [40-5-922];

(b) [section 11] [40-5-924];

(c) [sections 22 through 24] [37-1-307, 40-1-107, and 40-4-105];

(d) [section 93] [50-15-403];

(e) [section 95] [61-5-107];

(f) the bracketed provisions in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116].

(4) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that the federal government has granted this state an exemption from one of the following provisions, the provision terminates on the date the exemption takes effect:

(a) [section 9] [40-5-922];

(b) [section 11] [40-5-924];

(c) [sections 22 through 24] [37-1-307, 40-1-107, and 40-4-105];

(d) [section 93] [50-15-403, certification filed April 24, 1998];

(e) [section 95] [61-5-107];

(f) the bracketed provisions in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116].

(5) (a) The department of public health and human services shall do everything reasonably within its power to obtain, as soon as possible, federal government exemptions from the provisions listed in subsection (4).

(b) Because section 395(c) of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) allows a grace period for states to amend their constitutions in order to comply with PRWORA and because the Montana legislature believes that the section of PRWORA prohibiting a jury trial in a paternity proceeding violates Article II, section 26, of the Montana constitution and is therefore rejected, the department of public health and human services shall seek a federal government exemption from the jury trial prohibition in PRWORA as the first exemption it seeks under subsection (5)(a). [This exemption was received on December 8, 1997.]

(6) [Sections 9, 11, 22 through 24, 93, and 95] [37-1-307, 40-1-107, 40-4-105, 40-5-922, 40-5-924, 50-15-403, and 61-5-107] and the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116] terminate July 1, 1999.

(7) If the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116] terminates, the code commissioner is instructed to renumber subsections, adjust internal references, and correct grammar and arrangement." Section 1, Ch. 27, L. 1999, revised this note by deleting references to [section 93], which amended 50-15-403.

1995 Amendment: Chapter 515 in (1) inserted "that weighs at least 350 grams at death or, if the weight is unknown, has reached 20 completed weeks of gestation at death"; and made minor changes in style. Amendment effective January 1, 1996.

Severability: Section 23, Ch. 515, L. 1995, was a severability clause.

1993 Amendment: Chapter 287 in (1), near beginning, substituted "disposition of a dead body or fetus" for "interment" and after "personal data" inserted reference to data on deceased and on parents of fetus; in (2), at beginning, inserted "The person in charge of disposition of the dead body or fetus", substituted "certifying physician" for "physician last in attendance upon the deceased", substituted "for medical certification of" for "or the state medical examiner, who shall certify", after "cause of death deleted" "according to his best knowledge and belief", substituted language requiring completion of certification of cause of death for former (2)(b) and (3) that provided alternatives allowing presentation of fetal death certificate to person in attendance or notification to local registrar of attendance or lack of attendance at death (see 1993 Session Law for text), and at end substituted "in the registration area where the death occurred" for "within 3 days after the occurrence"; and made minor changes in style.

1993 Statement of Intent: The statement of intent attached to Ch. 287, L. 1993, provided: "Passage and approval of this bill would require the department of health and environmental sciences [now department of public health and human services] to amend existing rules and possibly to adopt new rules under the authority already delegated under 50-1-202(20) and 50-15-102. The amendments to 50-15-403 replace the current 3-day filing requirement for a death certificate with timeframes established by rule. The legislature intends that these timeframes remain relatively brief but that good cause be recognized when the person in charge of disposition of a dead body is unable to obtain a physician's certification within the set time.

The department shall amend or replace its burial transit permit rule, Rule 16.6.906, Administrative Rules of Montana, to conform with the changes made by 50-15-405. The department may, in replacing this permit with a dead body removal authorization, require any information as to contemplated time, site, and method of disposition as the performance of its vital statistics mission requires."

Administrative Rules

ARM 37.8.801 Death certificate.

50-15-404. Preparation of certificate when death not medically attended. (1) If the death or fetal death occurred without medical attendance or the physician or advanced practice registered nurse last in attendance failed to sign the death certificate, the local registrar may complete the certificate on the basis of information received from persons having knowledge of the facts.

(2) If it appears the death or fetal death resulted from other than natural causes, the local registrar shall notify the coroner and the state medical examiner for investigation and certification.

History: En. Sec. 66, Ch. 197, L. 1967; R.C.M. 1947, 66-4426; amd. Sec. 29, Ch. 7, L. 1979; amd. Sec. 3, Ch. 258, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 258 in (1) inserted reference to advanced practice registered nurse. Amendment effective October 1, 2001.

50-15-405. Authorization for removal of body from place of death. (1) Except as provided in subsection (2), a dead body may be removed from the place of death only upon the written authorization or oral authorization, which must be reduced to writing within 24 hours, of the physician in attendance at death or the physician's designee, the advanced practice registered nurse in attendance at death, the coroner having jurisdiction, or a mortician licensed under 37-19-302.

(2) If the death requires inquiry under 46-4-122, the written authorization may only be granted by the coroner having jurisdiction or the coroner's designee or by the state medical examiner if the coroner

fails to act. However, when the only reason for inquiry under 46-4-122 is that the body is to be cremated, the coroner may grant oral authorization for cremation of the body, which must be reduced to writing as specified under subsection (1) by the coroner.

(3) The written authorization to move a dead body or, when applicable, to cremate a dead body must be made in quadruplicate on a form provided by the department. The person in charge of disposition of the dead body, the coroner having jurisdiction, and the local registrar must each be provided with and retain a copy of the authorization. A fourth copy may accompany the body to final disposition, as necessary.

(4) A written authorization issued under this section permits removal, transportation, and final disposition of a dead body.

History: En. Secs. 67, 68, Ch. 197, L. 1967; R.C.M. 1947, 69-4427, 69-4428; amd. Sec. 30, Ch. 7, L. 1979; amd. Sec. 4, Ch. 287, L. 1993; amd. Sec. 18, Ch. 515, L. 1995; amd. Sec. 4, Ch. 258, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 258 in (1) near end inserted "the advanced practice registered nurse in attendance at death". Amendment effective October 1, 2001.

1995 Amendment: Chapter 515 in second sentence of (2) substituted "cremation" for "removal"; and in (3) inserted "or, when applicable, to cremate a dead body", substituted "quadruplicate" for "triplicate", and inserted sentence providing that a fourth copy may accompany the body to final disposition, as necessary. Amendment effective January 1, 1996.

Severability: Section 23, Ch. 515, L. 1995, was a severability clause.

1993 Amendment: Chapter 287 substituted language concerning authorization to remove a body from place of death for former section that read: "(1) No dead body may be disposed of or removed from a registration district until a permit for disposition or removal has been issued by the local registrar.

(2) No permit may be issued until a death certificate, fetal death certificate, or notice of delay as required in subsection (3) of this section has been filed with the local registrar.

(3) If the cause of death or fetal death cannot be determined within 3 days after the occurrence, the attending physician, coroner, or medical examiner shall give the local registrar written notice of the reason for delay so that a permit may be issued for disposition of the body."

1993 Statement of Intent: The statement of intent attached to Ch. 287, L. 1993, provided: "Passage and approval of this bill would require the department of health and environmental sciences [now department of public health and human services] to amend existing rules and possibly to adopt new rules under the authority already delegated under 50-1-202(20) and 50-15-102. The amendments to 50-15-403 replace the current 3-day filing requirement for a death certificate with timeframes established by rule. The legislature intends that these timeframes remain relatively brief but that good cause be recognized when the person in charge of disposition of a dead body is unable to obtain a physician's certification within the set time.

The department shall amend or replace its burial transit permit rule, Rule 16.6.906, Administrative Rules of Montana, to conform with the changes made by 50-15-405. The department may, in replacing this permit with a dead body removal authorization, require any information as to contemplated time, site, and method of disposition as the performance of its vital statistics mission requires."

Administrative Rules

ARM 37.8.802 Fetal death certificate.

ARM 37.8.808 Dead body removal authorization.

50-15-406. Body brought into state for disposition. If a body is brought into the state for burial or other disposition accompanied by a permit, the local registrar shall endorse the permit and keep a record of it.

History: En. Sec. 69, Ch. 197, L. 1967; R.C.M. 1947, 69-4429.

50-15-407. Disinterment permit. (1) A body, after burial, may be disinterred for reinterment or transport after a permit is obtained from the local registrar of the jurisdiction where the body is interred.

(2) Administration of this section is in the department, which shall adopt rules accordingly. The rules shall provide that, as a precondition to the permit, the applicant make a showing of reasonable cause for the disinterment.

(3) This section provides a supplementary procedure for disinterment of a dead body and is not amendatory to or repealing of any other act.

History: En. Sec. 1, Ch. 481, L. 1973; amd. Sec. 19, Ch. 187, L. 1977; R.C.M. 1947, 69-4428.1.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Human Skeletal Remains and Burial Site Protection Act, Title 22, ch. 3, part 8.

Penalty for disturbing corpses, 44-3-404.

Authority to order exhumation for postmortem examination, 46-4-103.

Power of County Coroner to order exhumation, 46-4-110.

Administrative Rules

ARM 37.8.816 Disinterment permits.

50-15-408 reserved.

50-15-409. List of deaths to be made by department — copy to county clerk. The department shall prepare on or before the fifth of January, April, July, and October of each year a list of all deaths, together with the date of the death, reported to it during the period and shall send a copy of the list of deaths to the county clerk of each county in the state.

History: En. Sec. 2, Ch. 186, L. 1935; re-en. Sec. 10400.50, R.C.M. 1935; R.C.M. 1947, 91-4458; amd. Sec. 175, Ch. 418, L. 1995; amd. Sec. 521, Ch. 546, L. 1995; Sec. 72-16-217, MCA 1999; redes. 50-15-409 by Sec. 35, Ch. 9, Sp. L. May 2000.

Compiler's Comments

1995 Amendments: Chapter 418 substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 substituted "department of public health and human services" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

A style change in the chapters was slightly different. The codifier chose the most appropriate.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clauses: Section 503, Ch. 418, L. 1995, was a saving clause.

Section 571, Ch. 546, L. 1995, was a saving clause.

50-15-410 reserved.

50-15-411. Sudden infant death syndrome — findings — definition. (1) As used in 50-15-412 and this section, "sudden infant death syndrome" means the sudden death of an infant under 1 year of age that remains unexplained after a thorough case investigation, including the performance of a complete autopsy, an examination of the death scene, and a review of the clinical history.

(2) The legislature recognizes that research has shown that sudden infant death syndrome is a leading cause of death among children from 1 month to 1 year of age. The legislature finds and declares that sudden infant death syndrome is a serious problem within Montana and that public interest is served by research and study of sudden infant death syndrome and its potential causes and indications.

History: En. Sec. 1, Ch. 351, L. 1997.

Compiler's Comments

Effective Date: Section 4, Ch. 351, L. 1997, provided: "[This act] is effective July 1, 1997."

50-15-412. Cause of death — sudden infant death syndrome. When the coroner's findings are consistent with sudden infant death syndrome, the coroner may state on the death certificate that sudden infant death syndrome was the cause of death.

History: En. Sec. 2, Ch. 351, L. 1997.

Compiler's Comments

Effective Date: Section 4, Ch. 351, L. 1997, provided: "[This act] is effective July 1, 1997."

Cross-References

Office of County Coroner, Title 7, ch. 4, part 29.
Investigation of death — autopsy, Title 46, ch. 4, part 1.
Cadavers and autopsies, Title 50, ch. 21, part 1.

Parts 5 and 6 reserved

Part 7 Tumor Registry

Part Compiler's Comments

Severability: Section 7, Ch. 354, L. 1981, was a severability section.

Part Administrative Rules

Title 37, chapter 8, subchapter 18, ARM Tumor registry.

50-15-701. Short title. This part may be cited as the "Tumor Registry Act".

History: En. Sec. 1, Ch. 354, L. 1981.

50-15-702. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "Health care practitioner" means a person licensed pursuant to Title 37, chapter 3, to practice medicine or pursuant to Title 37, chapter 4, to practice dentistry.

(3) "Hospital" means a facility that provides, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick persons.

(4) "Medical services" means diagnosis or treatment of illness in a human being by or under the supervision of a health care practitioner.

History: En. Sec. 2, Ch. 354, L. 1981; amd. Sec. 106, Ch. 418, L. 1995; amd. Sec. 283, Ch. 546, L. 1995; amd. Sec. 1, Ch. 101, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 101 inserted definition of health care practitioner; and in definition of medical services, at end, substituted "health care practitioner" for "a physician licensed under Title 37, chapter 3, to practice medicine in Montana".

1995 Amendments — Composite Section: Chapter 418 in definition of Department substituted "department of public health" for "department of health and environmental sciences"; in definition of medical services, after "licensed", inserted "under Title 37, chapter 3"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in definition of Department substituted "department of public health and human services provided for in 2-15-2201" for "department of health and environmental sciences provided for in Title 2, chapter 15, part 21". Amendment effective July 1, 1995.

Because of the repeal of 2-15-2101, the Code Commissioner has codified the reference to 2-15-2201.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

50-15-703. Duty to report tumors. The following persons or entities shall report to the department on forms provided by the department all medical and personal information as specified in rules of the department and laboratory results pertaining to the treatment and condition of a person with a reportable tumor:

- (1) a hospital that provides medical services relating to the tumor;
- (2) a clinical laboratory, as defined in 50-5-101, that is not owned or operated by a hospital and that provides laboratory services relating to the tumor; and
- (3) a health care practitioner or health care facility, not covered by subsection (1) or (2), providing medical services relating to the tumor.

History: En. Sec. 3, Ch. 354, L. 1981; amd. Sec. 1, Ch. 12, L. 1985; amd. Sec. 2, Ch. 101, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 101 substituted current text concerning persons or entities required to report information regarding person with a tumor for former text that read: "A hospital that provides to any person medical services relating to a tumor designated as reportable by the department or a clinical laboratory, as defined in 50-5-101, that is not owned or operated by a hospital and that provides laboratory services relating to such a tumor shall make available to the department all medical and personal information and laboratory results relevant to that person's treatment and condition on forms provided by the department."

1985 Amendment: Inserted language requiring a clinical laboratory not owned or operated by a hospital to make its laboratory results relative to a tumor available to the department; and substituted "person's treatment and condition" for "person's treatment".

Administrative Rules

Title 37, chapter 8, subchapter 18, ARM Tumor registry.

50-15-704. Confidentiality. Information received by the department pursuant to this part may not be released unless:

- (1) it is in statistical, nonidentifiable form;
- (2) the provisions of Title 50, chapter 16, part 6, are satisfied;
- (3) the release or transfer is to a person or organization that is qualified to perform data processing or data analysis and that has safeguards against unauthorized disclosure of that information;
- (4) the release or transfer is to a central tumor registry of another state and is of information concerning a person who is residing in that state; or
- (5) the release is to a health care practitioner or health care facility that is providing or has provided medical services to a person who has or has had a reportable tumor.

History: En. Sec. 4, Ch. 354, L. 1981; amd. Sec. 27, Ch. 632, L. 1987; amd. Sec. 3, Ch. 101, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 101 in (2) substituted reference to part 6 for part 5; and inserted (5) concerning release of information to health care practitioner or health care facility.

1987 Amendment: In (2) substituted "Title 50, chapter 16, part 5" for "50-16-311".

Cross-References

Public participation in governmental operations, Art. II, sec. 9, Mont. Const.; Title 2, ch. 3.

Right of privacy, Art. II, sec. 10, Mont. Const.

Confidentiality of health care information, Title 50, ch. 16, part 5.

50-15-705. Tumor registry. The department shall maintain a registry containing the names of all persons reported to it and all other information submitted to the department concerning those persons pursuant to 50-15-703.

History: En. Sec. 5, Ch. 354, L. 1981.

50-15-706. Rules. The department may adopt rules implementing this part, including:

- (1) the types of tumors that are reportable; and

(2) the information on each patient having a reportable tumor that must be submitted to the department.

History: En. Sec. 6, Ch. 354, L. 1981.

Compiler's Comments

Statement of Intent: The statement of intent attached to SB 37 (Ch. 354, L. 1981) read: "A statement of intent is required for this bill because it creates rulemaking authority for the Department of Health and Environmental Sciences [now Department of Public Health and Human Services] to administer a Montana Central Tumor Registry. Rulemaking is primarily necessary to implement Section 3, which requires a hospital to report to the Department medical and personal information relevant to the treatment of any person having a tumor listed as reportable by the Department and given hospital medical services relating to that tumor. Rules would list precisely which tumors would be reportable and specify the information on each tumor patient to be reported. Those tumors most likely to be included are malignant neoplasms; carcinoid tumors, whether malignant, benign, or NOS ("not otherwise specified"); and benign tumors of the brain; but others may be added if their reporting becomes significant either statistically or as an aid to patient treatment, or they are requested to be added by physicians or hospitals.

As for the information to be reported, the rules will ask for:

(1) Medical and personal information on patients with tumors which assists the registry to develop statistics helpful to future health planning and medical treatment such as those showing survival rates for different types of cases and treatments, rates of certain cancers in areas of Montana or particular occupations, etc. (e.g. diagnosis made; medication and/or therapy given; occupation, sex and age of patient).

(2) Sufficient information to allow the registry to track and facilitate follow-up treatment of tumor cases (e.g. name; address; physician; hospital; and any subsequent treatment by hospital, whether or not tumor-related; social security number).

First adopted by the Senate Public Health, Welfare, and Safety Committee on the 26th day of January, 1981."

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Administrative Rules

Title 37, chapter 8, subchapter 18, ARM Tumor registry.

50-15-707 through 50-15-709 reserved.

50-15-710. Immunity from liability. A person other than the department may not be held liable in a civil or criminal action for complying with the reporting requirements of 50-15-703 or for lawfully using information provided by the tumor registry in a manner that does not violate the Tumor Registry Act.

History: En. Sec. 4, Ch. 101, L. 1997.