

TITLE 7 HEALTH
CHAPTER 2 VITAL STATISTICS
PART 2 VITAL RECORDS AND STATISTICS

7.2.2.1 ISSUING AGENCY: Department of Health, Epidemiology and Response Division, Bureau of Vital Records and Health Statistics.
[7.2.2.1 NMAC - Rp, 7 NMAC 2.2.1, 12/30/2010]

7.2.2.2 SCOPE: These regulations govern the creation and maintenance of a system of vital records and health statistics in New Mexico and insure the integrity of all vital records and health statistics issued or maintained by the department of health.
[7.2.2.2 NMAC - Rp, 7 NMAC 2.2.2, 12/30/2010]

7.2.2.3 STATUTORY AUTHORITY: The regulations set forth herein are promulgated by the secretary of the department of health by the authority of Section 9-7-6(F) NMSA 1978 and implement the Vital Statistics Act, Sections 24-14-1 to 24-14-31 NMSA 1978, as amended. These regulations also implement certain sections of the Uniform Parentage Act, 40-11-1 et seq. , at Sections 40-11-5 and 40-11-6 NMSA 1978.
[7.2.2.3 NMAC - Rp, 7 NMAC 2.2.3, 12/30/2010]

7.2.2.4 DURATION: Permanent.
[7.2.2.4 NMAC - Rp, 7 NMAC 2.2.4, 12/30/2010]

7.2.2.5 EFFECTIVE DATE: 12-30-10, unless a later date is cited at the end of a section.
[7.2.2.5 NMAC - Rp, 7 NMAC 2.2.5, 12/30/2010]

7.2.2.6 OBJECTIVE: These regulations are promulgated pursuant to statute for the purpose of installing, maintaining and operating a system of vital statistics throughout this state.
[7.2.2.6 NMAC - Rp, 7 NMAC 2.2.6, 12/30/2010]

7.2.2.7 DEFINITIONS: As used in these regulations.

A. “Act” means the Vital Statistics Act, Sections 24-14-1 to 24-14-31, NMSA 1978 as amended.
B. “Bureau” means the vital records and health statistics bureau, epidemiology and response division) within the department of health, which was formerly and in the statute referred to as the vital statistics bureau. Vital Statistics Act 24-14-1, et sequens, NMSA 1978.

C. “Certificate of still birth” means a certificate created by the BVRHS at the request of a parent named on a report of spontaneous fetal death which captures data from a report of a spontaneous fetal death reported in accordance with New Mexico law. The certificate is intended to memorialize a stillbirth event, but cannot be used as proof of a live birth, for identification or other legal purposes.

D. “Certifier”, for purposes of death records means a person authorized to certify cause of death pursuant to the laws of New Mexico.

E. “Dead body” means a human body or such parts thereof other than skeletal remains which cannot be classified as artifacts; dead within the meaning of Section 12-2-4 NMSA 1978.

F. “Department” means the department of health.

G. “Fetal death” means death prior to complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy; the death is indicated by the fact that after such expulsion or extraction the fetus does not breathe or show any evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.

(1) “Induced termination of pregnancy” means the purposeful interruption of pregnancy with the intention other than to produce a live-born infant or to remove a dead fetus, and which does not result in a live birth; induced abortion.

(2) “Spontaneous fetal death” means the expulsion or extraction of a product of human conception resulting in other than a live birth and which is not an induced termination of pregnancy; still birth.

H. “File” means to present a vital record for registration by the state registrar.

I. “Final disposition” means the burial, interment, cremation, removal from the state or other authorized disposition of a dead body or fetus.

J. "Forms" means all certificates, forms, electronic media, reports, and records, and any safety paper used in their production, which are vital records.

K. "Fraud manager" means an employee or representative of the bureau whose responsibilities include liaison with law enforcement, immigration, passport, embassy and consular officials, or other agencies, and who investigates and/or coordinates the investigation of any incidence or suspected incidence of fraud, or violation of statute or regulation, and who reports on these investigations to the state registrar.

L. "Immediate family" means any of the following: mother, father, grandmother, grandfather, grandchild, sibling, child or current spouse.

M. "Institution" means any establishment, public or private, which provides in-patient or out-patient medical or surgical, or diagnostic care or treatment or nursing, custodial, or domiciliary care, or to which persons are committed by law.

N. "Live birth" means the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy, which, after such expulsion or extraction, breathes, or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached.

O. "OMI" means the office of the medical investigator.

P. "Physician" means a person authorized or licensed to practice medicine or osteopathy pursuant to the laws of New Mexico.

Q. "Registration" means the acceptance by the state registrar and the incorporation into his or her official records of vital records provided for in the act.

R. "State" means the state of New Mexico.

S. "State registrar" means the person appointed under the Vital Statistics Act, section 24-14-14, et seq. NMSA 1978, and whose duties are described in the act at section 24-14-4 NMSA 1978.

T. "System of vital statistics" means the registration, collection, preservation, amendment and certification of vital records; the collection of other reports required by this act; and activities related thereto, including the tabulation, analysis and publication of vital statistics.

U. "Vital records" means certificates, records, reports, or registration forms of birth and death, and supporting documentation.

V. "Vital statistics" means the data derived from certificates and reports of birth, death, spontaneous fetal death, induced termination of pregnancy and related reports.

[7.2.2.7 NMAC - Rp, 7 NMAC 2.2.7, 12/30/2010]

7.2.2.8 BUREAU OF VITAL RECORDS FORMS: All forms used in the system of vital statistics are the property of the department, and shall be returned to the state registrar upon demand. Only those forms prescribed, distributed and approved by the state registrar shall be used in the reporting of vital records and statistics or in making copies thereof. Such forms shall be used for official purposes only.

A. Requirements for the preparation of forms.

(1) All certificates, registration forms, reports and records relating to vital statistics must either be prepared in approved electronic form or on a typewriter or printer which prints in unfading ink. All signatures required shall be entered in unfading ink, unless otherwise instructed in these or related regulations.

(2) Unless otherwise directed by the state registrar, no certificate, registration form, record or report shall be complete and acceptable for registration that:

(a) does not have the certifier's name typed or printed legibly with his or her signature;

(b) does not supply all items of information called for thereon or satisfactorily account for their omission;

(3) does not contain handwritten or approved electronic signatures, as required;

(4) includes alterations, including all manner of erasures, the use of correction fluids, and other correction devices;

(5) is marked "copy" or that is a carbon or photo or other copy;

(6) is prepared on an improper form;

(7) contains improper or inconsistent data;

(8) contains an indefinite cause of death which denotes only symptoms of disease or conditions resulting from disease;

(9) is not prepared in conformity with regulations or instructions issued by the state registrar.

B. **Missing or unknown information:** The state registrar shall request and be provided information from applicants, informants, or other interested parties if the registrar finds that information is missing, inconsistent, or listed as “unknown”.
[7.2.2.8 NMAC - Rp, 7 NMAC 2.2.8, 12/30/2010]

7.2.2.9 REGISTRATION OF BIRTH: A certificate of birth registration form for each live birth which occurs in this state shall be filed with the bureau within ten (10) days after the birth and shall be registered if it has been completed and filed in accordance with the Vital Records Act and related regulations. Exceptions shall be only those noted in the Vital Records Act or related regulations, or upon written authorization of the state registrar.

A. **Infants of unknown parentage:** Foundling registration. The report for an infant of unknown parentage shall be registered on a foundling report, and:

- (1) show the required facts as determined by approximation and show parentage information as “unknown”;
- (2) show the signature and title of the custodian in lieu of the attendant.

B. **Safe haven registration:** If parentage information is known for a safe haven baby (NMSA, 1978 section 24-22-1 et seq.) it shall be entered on the certificate of birth registration form for filing with the state registrar. If no parentage information is known, the certificate of birth registration form shall be completed as a foundling registration.

C. **Birth registration - eleven days to one year:** Birth registrations forms filed after ten (10) days, but within one year from the date of birth, shall be filed on the certificate of birth registration form in the manner prescribed in NMSA, 1978 section 24-14-13 as amended. Certificates issued pursuant to the section shall not be marked “delayed.”

(1) In any case where the certificate of birth registration form is signed by someone other than the licensed attendant or person in charge of the institution where the birth occurred, a notarized statement setting forth the reason therefore must be attached to the certificate. The state registrar may require additional evidence in support of facts of birth and/or an explanation why the certificate of birth registration form was not filed within the required ten days.

(2) Out-of-hospital births not attended by a licensed medical attendant (physician, licensed certified nurse midwife, licensed midwife, emergency medical technician) must be signed by the mother as certifier, and sworn by any other person in attendance (if any other person was in attendance), and must be accompanied by notarized documents which prove both that a birth occurred and the New Mexico county in which the birth occurred. The state registrar will issue instructions containing a list of documents which will be acceptable as proof of birth, and as proof of residency.

[7.2.2.9 NMAC - Rp, 7 NMAC 2.2.9, 12/30/2010]

7.2.2.10 DELAYED CERTIFICATE OF BIRTH: All births presented for registration one year or more after the date of birth are to be filed on an application for delayed certificate of birth form or other format prescribed by the state registrar. No application for a delayed birth certificate shall be approved except by the state registrar or the deputy state registrar. No delayed certificate of birth shall be prepared for a person who is deceased.

A. **Who may request the registration of and sign an application for a delayed birth certificate.** Any person whose birth is not registered in this state, or his/her parent, or legal guardian, may request the registration of a delayed certificate of birth, subject to these regulations, evidentiary requirements and instructions issued by the state registrar. The application for each delayed certificate of birth shall be signed and sworn to before an official authorized to administer oaths, by the person whose birth is to be registered if such person is eighteen (18) years of age or over and is competent to sign and swear to the accuracy of facts stated therein; otherwise, the application shall be signed and sworn to by one of the following:

- (1) one of the parents of the applicant for registration; or
- (2) the legal guardian of the applicant for registration.

B. **Facts to be established for a delayed registration of birth.** The minimum facts which must be established by documentary evidence shall be the following:

- (1) the full name of the person at the time of birth;
- (2) the date of birth;
- (3) the place of birth;
- (4) the full maiden name of the mother; and
- (5) the full name of the father, if paternity has been established pursuant to the Vital Records Act and related regulations or the Uniform Parentage Act.

C. **Delayed registration following a legal change of status.** When evidence is presented and accepted reflecting a legal change of status by adoption, legitimation, paternity determination, denial of paternity, or acknowledgment of paternity; an amended, delayed certificate may be established to reflect such change. The existing certificate and the evidence upon which the amended, delayed certificate was based shall be placed in a special file. Such file shall not be subject to inspection except upon order of a court or by the state registrar for purposes of properly administering the vital statistics program.

D. **Documentary evidence requirements for delayed birth registration:** To be acceptable for filing the following is needed to support a delayed registration of birth:

- (1) to establish the name of the registrant; at least two pieces of documentary evidence;
- (2) to establish the date of birth; at least two pieces of documentary evidence;
- (3) to establish the place of birth; at least two pieces of documentary evidence.
- (4) to establish facts of parentage; at least one piece of documentary evidence.

E. **Documentary evidence - acceptability:** The state registrar may establish a priority of the best evidence, and will determine the acceptability of any document submitted as evidence.

(1) Documents presented such as census, hospital, church and school records must be from independent sources and shall be in the form of the original record or a duly certified copy thereof.

(2) All documents submitted in evidence must have been established at least five years prior to the date of the first application for a delayed birth certificate, or have been established prior to the applicant's tenth birthday, and may not have been established for the purpose of obtaining a certificate.

(3) Affidavits of personal knowledge are not acceptable as evidence to establish a delayed certificate of birth.

(4) All documents submitted to support a delayed certificate of birth are subject to verification.

(5) If any fraudulent document is submitted in evidence, no delayed birth certificate shall be prepared, and the fraud manager shall be notified of the attempt.

(6) Examples of acceptable documentary evidence include but are not limited to the following:

- (a) enrollment of service records;
- (b) tribal records from tribal authorities;
- (c) social security proof of application (NUMIDENT);
- (d) first application for marriage;
- (e) first application for voter registration; and
- (f) documents mentioned in Paragraph (1) of Subsection E of this section.

F. **Documentary evidence - retention of copies, abstracts:** The state registrar, or his or her designated representative, shall attach to the application for a delayed birth certificate, photo copies or an abstract and description of each document submitted to support the facts shown on the delayed birth certificate. All documents submitted in support of the delayed birth registration shall be returned to the applicant after review and use by the state registrar. The application and a copy of the documents submitted and accepted to support the delayed birth certificate shall be maintained in a permanent, confidential file.

If an abstract is used in lieu of photo copies it shall include the following information:

- (1) the title or description of the document;
- (2) the name and address of the custodian, if the document is an original or certified copy of a record;
- (3) the date of the original filing of the document being abstracted;
- (4) the information regarding the birth facts contained in the document.

G. **Certification by the state registrar:** The state registrar shall, by signature, certify that:

- (1) no prior birth certificate is on file for the person whose birth is to be recorded;
- (2) he or she has reviewed and accepted the evidence submitted to establish the facts of birth;
- (3) the list of documents accepted as evidence which is entered on the delayed certificate of birth accurately reflects the documents accepted as evidence.

H. **Rejection of applications for a delayed birth registration:** If an applicant for a delayed registration of birth fails to submit the minimum documentary evidence required for a delayed registration of birth or if the state registrar finds reason to question the validity or adequacy of the certificate or the documentary evidence, the state registrar shall not register the delayed certificate and shall advise the applicant of the reason for such by final rejection letter, signed by the state registrar. The final rejection letter with notice of such will be deemed the rejection of the application and related certificate for purposes of NMSA, 1978 section 24-14-16. Applicants initially submitting evidence for a delayed certificate of birth may receive preliminary letters from the *bureau of vital records and health statistics* requesting additional documentary evidence; such letters however shall not be considered the final rejection letter.

I. **Court order for delayed certificates of birth.** If an order from a court of competent jurisdiction to establish a delayed certificate of birth pursuant to NMSA, 1978 Sections 24-14-15 and 24-14-16 is entered the state registrar shall require the applicant for the delayed certificate of birth to provide a duly certified copy of the court order and the related petition and supporting documents presented to the court to obtain such order, if the documents have not been previously received by the department. If the department was not given notice as required by statute of a hearing on a delayed birth certificate, the department and state registrar may seek legal redress.

J. **Dismissal in six months:** Applications for delayed certificates which have not been completed within six months from the date of initial application may be dismissed at the discretion of the state registrar. Upon dismissal, the state registrar shall so advise the applicant.
[7.2.2.10 NMAC - Rp, 7 NMAC 2.2.10, 12/30/2010]

7.2.2.11 THE CREATION OF AMENDED CERTIFICATES OF BIRTH FOLLOWING ADOPTION, LEGITIMATION, DENIALS OF PATERNITY AND ACKNOWLEDGEMENTS OF PATERNITY AND OTHER LEGALLY RECOGNIZED DETERMINATIONS OF PARENTAGE:

A. **Paternity:** Upon receipt of a sworn acknowledgement of paternity signed by both parents, if no other man is shown as the father on the original certificate, an amended certificate shall be prepared. A written request by both parents, if made within the first year of the child's birth, (unless acceptable proof is submitted that the mother is deceased, then by the father) that the minor child's surname be changed, and if no other man is shown as the father on the original certificate, a revised certificate shall be prepared.

B. **Court orders:** If a person claims a change in paternity but cannot provide acknowledgement and/or denial of paternity as prescribed in the Uniform Parentage Act Section 40-11A-3, the person will be advised to seek a court adjudication of paternity.

C. An amended certificate of birth shall be prepared by the state registrar for a child born in this state upon receipt of a certified copy of a court determination of parentage or other acceptable evidence of parentage as required by the state registrar pursuant to the provisions of the Vital Records Act and related regulations and the Uniform Parentage Act.

D. Creation of amended certificate:

(1) The amended certificate of birth prepared after adoption, a denial of paternity, legitimation, a determination of parentage, or an acknowledgement of paternity shall be prepared on the form in use at the time of its presentation, and shall include the following items and such other information necessary to complete the certificate:

- (a) the name of the child;
- (b) the date and place of birth as transcribed from the original certificate;
- (c) the names and required personal information about the adoptive parent(s), the natural parent(s) or other legally recognized parents, whichever is applicable; and
- (d) the original filing date.

(2) The information necessary to locate the existing certificate and to complete the amended certificate shall be submitted to the state registrar on a form prescribed by him or her.

E. **Existing certificate - special filing of:** Upon preparation of the amended certificate, the existing certificate and the evidence upon which the amended certificate was based shall be placed in a special file. Such file shall not be subject to inspection except upon order of a court of competent jurisdiction or by the state registrar for purposes of properly administering the vital statistics program.

[7.2.2.11 NMAC - Rp, 7 NMAC 2.2.11, 12/30/2010]

7.2.2.12 ADOPTION OF FOREIGN BORN:

A. **Final Decree Requirements.** On proof of adoption, a certificate of foreign birth shall be established by the state registrar for a person born in a foreign country who was not a citizen of the United States at the time of birth, provided the following conditions exist:

- (1) the adopting parents are legal residents of New Mexico or members of the United States armed forces on active duty within the state of New Mexico;
- (2) the child is adopted in New Mexico;
- (3) a New Mexico court has issued an order recognizing the foreign adoption;
- (4) the department is provided a certified copy of the report of adoption and related court order;
- (5) the final decree of adoption includes or is amended to include the following court findings:
 - (a) the probable country of birth;
 - (b) the year (and if known), the date and place of birth;

(c) a provision directing the state registrar to establish a certificate of birth.

B. **Citizenship- limitations.** The birth certificate form used by the state registrar in cases of foreign birth shall state on its face “this certificate is not evidence of United States citizenship.”

C. **Confidentiality.** The evidence of adoption shall be sealed by the state registrar and shall not be subject to public inspection. The information shall be opened for inspection only upon court order, or upon the authorization of the state registrar in accordance with the Adoption Act.

D. **Applicability.** This section applies only to individuals born in foreign countries and who were neither born to U.S. citizens residing abroad nor naturalized as citizens prior to the adoption.

[7.2.2.12 NMAC - Rp, 7 NMAC 2.2.12, 12/30/2010]

7.2.2.13 DEATH REGISTRATION:

A. **Filing Deadlines.** A certificate of death for each death which occurs in this state shall be filed within five days after the death and prior to final disposition. Exceptions to this period shall be only those afforded by statute or regulation.

(1) An extension of the required filing time for a certificate of death may be granted at the discretion of the state registrar to prevent undue hardship in accordance with NMSA, 1978 section 24-14-24.

(2) In all cases the medical certification must be signed by the person responsible for such certification. If the cause of death is unknown or undetermined, the cause and or manner of death shall be shown as such on the certificate.

B. **Incomplete certificate of death.** If all the information necessary to complete the certificate of death is not available within the time prescribed for filing of the certificate, the funeral service practitioner shall file the certificate completed with all information that is available, and attach a note explaining why the incomplete items cannot be completed at the time of submission.

(1) The affidavit providing the information missing from the original certificate shall be filed with the state registrar as soon as possible, but in all cases within 30 days of the date of the death occurred unless otherwise specifically approved by the state registrar.

(2) When the affidavit results in changes to the existing certificate of death, such affidavit shall be considered an amendment; the certificate of death shall be marked “amended,” and the affidavit shall be attached to the original certificate which is retained by the bureau.

C. **Amendment of a certificate of death.** Unless otherwise provided for in these regulations, the certificate of death may be amended only in the following manner:

(1) Statistical items: non-medical statistical items, including but not limited to: ethnicity, education, race and occupation may be amended when new facts become available. The affidavit/change procedure described in Paragraphs (1) and (2) of Subsection B of 7.2.2.13 NMAC shall be used. Additional evidence may be required by the state registrar.

(2) Date of death, place of death, time of death, date pronounced, time pronounced, manner of death, and any portion of the cause of death may not be changed through the use of an amended certificate. These items shall only be changed by the preparation and filing of a medical affidavit signed by the certifier.

(3) The amendment of medically related items and items related to injury may only be submitted by the office of the medical investigator or equivalent military or tribal authorities and only on the form prescribed by the state registrar. Should the certificate of death be revised, resulting in changes of referenced material, the state registrar shall advise customary users of the certificate of the changes.

(4) An amendment of the marital status at time of death shall be made only if it is:

(a) requested by the person listed as informant on the certificate of death (who signs a notarized affidavit indicating that they previously gave incorrect info.); or

(b) accompanied by a notarized affidavit from the informant agreeing to the amendment; or

(c) requested by the funeral practitioner who provides an affidavit that the information as filed with the bureau was inconsistent with the information provided to such practitioner by the informant; or

(d) accompanied by a certified copy of a district court order directing the change in marital status, along with a copy of the petition for such order and evidence submitted to the court in support of the requested amendment, if such information was not previously supplied to the bureau.

D. **Certificate of death occurring in a hospital or other institution and not under the jurisdiction of OMI.** When a death occurs in a hospital or other institution, and the death is not under the jurisdiction of the office of the medical investigator, the person in charge of such institution, or his or her designated representative, may initiate the preparation of the certificate of death as follows.

(1) Place the full name of the decedent and the date and place of death on the certificate of death, and obtain information on the method and place of disposition and enter on the disposition part of the certificate, and obtain from the certifier the medical certification of cause of death and the certifier's signature;

(2) Present the partially completed certificate of death to the funeral service practitioner or person acting as such and advise them that they need to complete the missing items on the certificate and file it with the bureau of vital records and health statistics.

(3) For all deaths in which OMI assumes jurisdiction, including but not limited to a death without medical attendance and presumptive death, see OMI administrative rules at OMI 86-1. [7.2.2.13 NMAC - Rp, 7 NMAC 2.2.13, 12/30/2010]

7.2.2.14 DELAYED REGISTRATION OF DEATH: Any certificate issued for a death registered after the time prescribed by statute and regulation shall be marked "delayed." The delayed registration of a death shall be registered in the manner prescribed below.

A. If the certifier, at the time of death and the attending funeral services practitioner or person who acted as such are available to complete and sign the certificate of death, it may be completed without additional evidence and filed with the state registrar. For those certificates of death filed one year or more after the date of death, the certifier or office of the medical investigator and the funeral service practitioner or person who acted as such must state in accompanying affidavits that the information on the certificate of death is based on records kept in their files.

B. In the absence of the certifier or office of the medical investigator and the funeral service practitioner or person who acted as such, the prescribed delayed certificate of death form may be filed by the immediate family of the decedent and shall be accompanied by:

(1) an affidavit of the person filing the certificate swearing to the accuracy of the information on the certificate;

(2) two documents which identify the decedent and his or her date and place of death, a summary of which shall be placed on the certificate.

C. The state registrar may reject a certificate of death or require additional documentary evidence to prove the facts of death, or in his or her discretion refer the case to the office of the medical investigator.

[7.2.2.14 NMAC - Rp, 7 NMAC 2.2.14, 12/30/2010]

7.2.2.15 DISPOSITION OF REPORTS OF INDUCED TERMINATION OF PREGNANCY: Reports of induced termination of pregnancy are statistical reports only and are not to be incorporated into the official records of the vital records and health statistics bureau, nor to be issued in any manner. The state registrar is authorized to dispose of the reports when all statistical processing of the records has been accomplished. However, the state registrar may establish a file of the records so they will be available for future statistical and research projects provided the file is not made a part of the official records and the reports are not made available for the issuance of certified copies. The file shall be retained for as long as the state registrar deems necessary, but in no case shall any report of induced termination of pregnancy be retained for longer than 18 months, and it shall then be destroyed. The file may be maintained by photographic, electronic, or other means as determined by the state registrar, in which case the original report from which the photographic, electronic or other file was made shall be destroyed. The provisions of Section 15 shall also apply to all records of induced termination of pregnancy filed prior to the adoption of this part.

[7.2.2.15 NMAC - Rp, 7 NMAC 2.2.15, 12/30/2010]

7.2.2.16 AUTHORIZATION FOR FINAL DISPOSITION:

A. **Disposition of Body.** Before final disposition of a dead body or a fetus, the funeral service practitioner or person acting as such shall.

(1) Obtain assurance from the certifier that death is from natural causes and that the certifier will assume responsibility for certifying the cause of death or fetal death.

(2) For any case which comes under the jurisdiction of the office of the medical investigator, notify the office of the medical investigator and obtain authorization for removal and final disposition of a dead body or fetus.

B. **Disposition of a dead body not under the supervision of a licensed New Mexico funeral service practitioner, direct disposer.** When a death occurs in a hospital or other institution, and the disposition is not under the supervision of a licensed New Mexico funeral service practitioner, or direct disposer, the person in charge of such an institution or his or her designated representative shall:

- (1) initiate the certificate of death or burial as follows:
 - (a) place the full name of the decedent and the date of death on the certificate of death registration form;
 - (b) obtain the information from the person to whom the body is being released and complete on the disposition section of the form the method and place of disposition; and
 - (c) obtain the medical certification of the cause of death from the certifier and the certifier's signature;
- (2) obtain and verify through identification the full name and address of the person to whom the dead body is being released for disposition, and the place of disposition; and
- (3) advise the person taking charge of the dead body of the statutory requirements to file the certificate of death registration form within 5 days, and prior to final disposition;
- (4) send a photocopy of the partially completed certificate of death along with the name and address of the person who is not a funeral service practitioner, but who is acting as such, to the bureau of vital records and health statistics within five (5) days;
- (5) the original, partially completed copy of the registration form shall be completed by the person who is not a funeral service practitioner, but who is acting as such, to file within 5 days with the bureau of vital records and health statistics.

C. **Filing of fetal death report.** For any fetal death of 500 grams or more occurring in the state, a fetal death report shall be filed by the hospital, institution, physician, or, in the event the fetal death was unattended by any of the former, by the office of the medical investigator within 5 days and prior to final disposition. If a fetal death occurs with a midwife in attendance, the office of the medical investigator must be notified since New Mexico law limits pronouncement of death to a physician, certified nurse practitioner, or the office of the medical investigator. If a funeral service practitioner is aware that a fetal death occurred without medical attention, he shall initiate a fetal death report and notify the office of the medical investigator. In all circumstances, a fetal death report must be initiated before the fetus is released for disposition.

D. **Authorization for disinterment and reinterment.** An authorization for disinterment and reinterment of a dead body shall be issued by the state registrar or state medical investigator on the form prescribed, upon receipt of a written request from the immediate family and the person who is in charge of the disinterment or upon receipt of an order of a court of competent jurisdiction directing the disinterment. A disinterment/reinterment permit can only be issued to a licensed funeral service practitioner or direct disposer.

(1) Upon receipt of a court order or signed permission of the owner of the cemetery or burial ground, the state registrar or state medical investigator may issue one authorization to permit disinterment and reinterment of all remains in a mass disinterment. Insofar as possible, the remains of each body should be identified. The place of disinterment and reinterment shall be specified, including the cemetery name, the city, county and state of burial. The authorization shall be permission for disinterment, transportation and reinterment.

(2) Authorization shall be obtained from the state archaeologist for disinterment subject to the provisions of Section 18-6-11 NMSA 1978.

(3) A dead body properly prepared by an embalmer and deposited in a receiving vault shall not be considered a disinterment when removed from the vault for final disposition.

(4) No permit shall be issued for disinterment/reinterment of a dead body within the boundaries of a single cemetery, but notice of such should be provided to the immediate family of the decedent.

[7.2.2.16 NMAC - Rp, 7 NMAC 2.2.16, 12/30/2010]

7.2.2.17 AMENDMENT OF LIVE BIRTH AND DEATH CERTIFICATES: This section is intended to supplement previous sections regarding the amendment of live birth and death records.

A. **Who may apply to amend a certificate - birth and death.**

(1) To amend a birth certificate, application may be made by both parents, the legal guardian, the registrant if 18 years of age or over, or the individual responsible for filing the certificate. On any request not made by the registrant him or herself for a child age fourteen years of age or older, the child must sign the application or give notarized consent to the change, and Section 17.D [now Subsection D of 7.2.2.17 NMAC] of these regulations applies.

(2) To amend a certificate of death, application may be made by the immediate family or the funeral service practitioner or person acting as such who signed the certificate of death. Applications to amend the medical certification of cause of death shall be made only by the certifier who signed the medical certification or the office of the medical investigator. Other requested amendments shall be in conformance with these regulations and the Vital Records Act.

B. Minor Errors.

(1) Correction of minor errors by the state registrar during the first year of birth: Correction of obvious minor errors, transposition of letters in words of common knowledge, or omissions may be made by the state registrar either upon his or her own observation or query.

(2) Correction of minor errors may be made upon request of the immediate family of the registrant during the first year after birth. The certified certificate shall not be marked "amended."

C. Amendments of first or middle name. Unless otherwise provided for in these regulations or in statute, all applications for amendment to change the first and/or middle name on a vital record shall be supported by.

(1) An affidavit setting forth information to identify the certificate; the incorrect data as it is listed on the certificate; the correct data as it should appear, together with two or more items of acceptable documentary evidence which support the alleged facts and which were established at least five years prior to the date of the first application for amendment and within seven years of the date of the event.

(2) When minor corrections are made by the state registrar, a notation as to the source of the information, together with the date the change was made and the initials of the authorized agent making the change shall be made on the computer file, but shall not become a part of any certificate issued.

(3) The state registrar shall evaluate the evidence submitted in support of any amendment, and when he or she finds reason to doubt its validity or adequacy the amendment may be rejected and the applicant advised of the reasons for this action.

(4) The bureau may also amend a record upon receipt of a court order for a name change made pursuant to the provisions of NMSA, 1978 Section 40-8-1.

D. Other Amendments.

(1) Any application for amendment to change a last name on a vital record, except as otherwise provided in these regulations, shall be accompanied by an order from a court of competent jurisdiction.

(2) Any amendment to a vital record not addressed in these regulations shall be at the discretion of and in the manner prescribed by the state registrar.

E. Amendment of given name - birth certificates. If acceptable evidence specified by the state registrar is presented which demonstrates a registrant has commonly used a given name other than that shown on a certificate of birth, given names may be amended upon written request of the registrant or:

- (1) both parents; or
- (2) the mother in the case of a child with no legally recognized father; or
- (3) the father in the case of the death or incapacity of the mother; or
- (4) the mother in the case of the death or incapacity of the father; or
- (5) the guardian or agency having evidence of legal custody of the registrant; or
- (6) any other legally recognized parent or legal custodian of a minor.

F. Addition of given names - birth certificates. Given names, for a child whose birth was recorded without given names, may be added to the certificate upon written request of the registrant; or

- (1) both parents; or
- (2) the mother in the case of a child with no legally recognized father; or
- (3) the father in the case of the death or incapacity of the mother; or
- (4) the mother in the case of the death or incapacity of the father; or
- (5) the guardian or agency having evidence of legal custody of the registrant; or
- (6) any other legally recognized parent or legal custodian of a minor, or
- (7) upon the receipt of an order by a court of competent jurisdiction

G. Amendment of the same item more than once. Once an amendment of an item is made on a vital record, that item shall not be amended again except upon receipt of a court order.

H. When an applicant or informant does not submit the minimum documentation required in the regulations for issuing or amending a vital record, or when the state registrar has reasonable cause to question the validity or adequacy of the applicant's sworn statements or the documentary evidence submitted, the state registrar shall not issue or amend the vital record and shall advise the applicant of the reason for the action.

[7.2.2.17 NMAC - Rp, 7 NMAC 2.2.17, 12/30/2010]

7.2.2.18 CERTIFICATES OF STILL BIRTH:

A. Form of Fetal Death Report. The state registrar shall prescribe the form and content of a spontaneous fetal death report.

B. **Application.** The state registrar shall prescribe the form and content of an application for a certificate of still birth which shall specify the information necessary to prepare the certificate.

C. **Form of Certificate of Still Birth.** The state registrar shall prescribe the form of a certificate of still birth and such form shall be distinct from the form for a certificate of live birth.

(1) A certificate of still birth shall include the state file number of the corresponding spontaneous fetal death report.

(2) The certificate of still birth shall contain the phrase “not evidence of live birth, or intended for identification or other legal purposes.”

D. **Information on Certificate of Still Birth.** If requested, the state registrar shall create a certificate of still birth based on the information contained in a report of spontaneous fetal death filed with the bureau in accordance with New Mexico law.

E. **Who may request a certificate of Still Birth.** Only a person designated as a parent on a report of spontaneous fetal death may request and receive a certificate of still birth pertaining to that spontaneous fetal death.

F. **Cost.** Certificates of still birth will be issued at no cost to the requesting parent.

G. **Amendments.** The bureau will not accept or process requests for substantive amendments to a certificate of still birth. Minor or clerical errors may be remedied if information on the application for a certificate of still birth differs from the report of spontaneous fetal death filed with the bureau.

H. **Retroactivity.** The bureau shall create certificates of still birth for still birth events that occurred from January 1980 forward if a report of spontaneous fetal death was filed with the bureau. The bureau does not have information to create certificates of still birth for still birth events prior to January 1980. If data held by the bureau for the creation of retroactive certificates of still birth is incomplete, supplemental information may be provided by the mother at the time of application for a retroactive certificate and such information will be accepted at the discretion of the state registrar.

I. **Retention of Fetal Death Reports:** Spontaneous fetal death reports filed after the finalization of this rule section (7.7.2.18 NMAC) shall be maintained as permanent records of the bureau. Spontaneous fetal death reports filed prior to the finalization of this rule, 7.2.2.18 NMAC, but maintained by the bureau pursuant to 7.2.2.15 NMAC (prior to amendment) shall be permanently maintained by the bureau to support the creation of retroactive certificates of still birth.

[7.2.2.18 NMAC - N, 12/30/2010]

7.2.2.19 RECORD PRESERVATION AND DESTRUCTION: When an authorized reproduction of a vital record has been properly prepared by the state registrar and when all steps have been taken to ensure the continued preservation of the information, the record from which the authorized reproduction was made may be disposed of by the state registrar. The record may not be disposed of, however, until the quality of the authorized reproduction has been tested to ensure that acceptable certified copies can be issued and until a security copy of the document has been placed in a secure location removed from the building where the authorized reproduction is housed. When no longer required for administrative use, the state registrar shall offer the original documents from which the authorized reproductions are made to the state records center and archives which shall be allowed to permanently retain the records pursuant to the restrictions in the vital statistics law and regulations related to access to such records. If the state records center and archives does not wish to place the records in its files the state registrar shall be authorized to destroy the documents upon receipt of written permission from state records and archives. The destruction shall be by approved methods for disposition of confidential or sensitive documents. [7.2.2.19 NMAC - Rp, 7 NMAC 2.2.18, 12/30/2010]

7.2.2.20 DISCLOSURE OF RECORDS:

A. To protect the integrity of vital records the state registrar or other authorized custodian of vital records shall not permit inspection of, nor disclose information contained in vital statistics records, or copy or issue a copy of all or part of any vital record unless he or she is satisfied that the applicant has a direct and tangible interest in the record.

(1) The registrant, a member of the registrant’s immediate family, the registrant’s legal guardian, or any of their respective legal representatives shall be considered to have a direct and tangible interest. Others may demonstrate a direct and tangible interest when information is needed for determination or protection of a personal or property right of the registrant.

(2) The term “legal representative” shall include an attorney, executor of the estate, physician, funeral service practitioner, trust officer or other corporate fiduciary or other authorized agent acting on behalf of the registrant or his or her family.

(3) The natural parents of adopted children, when neither has custody, and business firms or other agencies requesting listings of names and addresses shall not be considered to have a direct and tangible interest.

B. The state registrar may permit the use of data from vital statistics records for statistical or research purposes, subject to those conditions the state registrar may impose. No data shall be furnished from records for research purposes until the state registrar has prepared or accepted, in writing, the conditions under which the records or data will be used, and the estimated or actual charges therefore and has received an agreement signed by a responsible agent of the agency or research organization agreeing to meet with and conform to the conditions.

C. The state registrar in his or her discretion may disclose copies or data from vital statistics records in accordance with the Vital Records Act and to federal, state, county, or tribal governments, or municipal agencies of government which the request data in the conduct of their official duties, except that any costs incurred by the bureau shall be the responsibility of the receiving agency.

D. Information from vital statistics records indicating a birth occurred to an unmarried woman may be disclosed only if it can be shown that disclosure of the information will be of benefit to the registrant.

E. The state registrar or authorized local custodian shall not issue a certified copy of a record until a signed application has been received from the applicant. Whenever the state registrar shall deem it necessary to establish an applicant's right to information from a vital record, the state registrar or local custodian may also require acceptable identification of the applicant and/or a sworn statement.

F. Nothing in this part shall be construed to permit disclosure of information contained in the "information for medical and health use only" section of the birth certificate unless specifically authorized by the state registrar for statistical or research purposes.

G. When 100 years have elapsed after the date of birth, provided the registrant is deceased, or 50 years have elapsed after date of death, the records in the custody of the state registrar shall become public records and any person may obtain copies of the record upon submission of an application containing sufficient information to locate the record and the payment of the proper fee.

H. No person except the parent or parents designated on a report of spontaneous fetal death shall be considered to have direct and tangible interest concerning that record of spontaneous fetal death and any resulting certificate of still birth.

[7.2.2.20 NMAC - Rp, 7 NMAC 2.2.19, 12/30/2010]

7.2.2.21 VITAL RECORDS: FORM AND REPRODUCTION OF RECORDS, VERIFICATION AND FRAUD:

A. **Reproduction of Records.** Copies of vital records may be made by mechanical, electronic, or other reproductive process, except that the information contained in the "information for medical and health use only" section of the birth certificate shall not be included, except as provided by statute or regulation.

B. **Form of Records.** The format of all certificates shall be at the discretion of the state registrar. Each non-memorial certificate to be authentic shall contain the seal of the state of New Mexico, the signature of the state registrar or authorized delegate, and a certification as prescribed.

C. **Verification.** Confidential verification of the facts contained in a vital record may be furnished by the state registrar to any federal, state, county or municipal government agency, or to any other agency representing the interest of the registrant, subject to and any limitations as provided for in these regulations. Verifications shall be on forms prescribed and furnished by the state registrar, or on forms furnished by the requesting agency and acceptable to the state registrar; or, the state registrar may authorize the verification in other ways when it shall prove in the best interests of his or her office. Costs incurred in the provision of the verification shall be the responsibility of the receiving agency.

D. **Fraud.** When the state registrar finds evidence that a certificate was registered through misrepresentation or fraud, he or she shall have authority to withhold the issuance of the certificate. If any certificate has already been issued and cannot be recalled, the state registrar shall tag the record for non-issuance, and notify all concerned agencies of the presumption of fraud.

[7.2.2.21 NMAC - Rp, 7 NMAC 2.2.20, 12/30/2010]

7.2.2.22 MISSING CHILD REPORTING: Upon notification of the state registrar by a law enforcement agency that a child born in this state is missing, the record shall be flagged "M.C., do not issue."

A. Upon notification by a law enforcement agency that a child born outside this state is missing, the state registrar shall notify the corresponding officer in the state where the child was born that the child has been reported missing.

B. In response to any inquiry or request for a certificate, the state registrar or any appointed local registrar appointed by him or her shall not provide a copy of a birth certificate or information concerning the birth record of any missing child whose record is flagged, except following the notification of the law enforcement agency having jurisdiction over the investigation of the missing child.

C. Upon notification by a law enforcement agency that a missing child has been recovered, the state registrar shall remove the flag from the child's birth record.
[7.2.2.22 NMAC - Rp, 7 NMAC 2.2.21, 12/30/2010]

7.2.2.23 FEES FOR COPIES, SEARCHES AND OTHER SERVICES: No copy of a birth certificate or certificate of death shall be issued until the fee for the copy is received unless specific approval has been obtained from the state registrar or otherwise provided for by statute or regulation.

A. Each search for a birth certificate shall be \$10 and each search for a death certificate shall be \$5.00. The fee shall include one certified copy of the record, if available, and if no record is found the fee shall be non-refundable.

B. **Delayed birth or death registration.** The fee for the establishment of a delayed record shall be \$10.00 and shall include one certified copy of the delayed record.

C. Amendments.

(1) **Minor corrections.** For the amendment of a record due to obvious errors, omissions on birth records (other than the name of the father), or transposition of letters in words of common knowledge, there shall be no charge.

(2) **Major corrections.** For the amendment of a record requiring the creation of an affidavit of correction or the submission of documentary evidence to support a change or correction to a record, the fee shall be ten dollars (\$10.00) for the revision, and \$10.00 for one certified copy of the amended record.

D. **Multiple Copies.** The fee for additional copies, after those provided for in Subsections A. and B., and Paragraph (2) of Subsection C, of this section shall be \$10.00 for each copy of a birth certificate and \$5.00 for each copy of a death certificate.

E. **Other.** For any statistical research, other agency verification, data provision service or permit not specified in statute, the state registrar shall determine the fee for service on the basis of the costs of providing such services and determine the manner in which such costs must be paid.

[7.2.2.23 NMAC - Rp, 7 NMAC 2.2.22, 12/30/2010]

7.2.2.24 PENALTIES:

A. Except for violations of Section 24-14-18 NMSA 1978, any person is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978, who willfully and knowingly:

(1) make any false statement or supplies any false information in a report, record or certificate required to be filed;

(2) with the intent to deceive, alters, amends or mutilates any report, record or certificate;

(3) uses or attempts to use, or furnishes to another for use for any purpose of deception any certificate, record, report or certified copy that has been altered, amended, or mutilated or contains false information; or

(4) neglects or violates any of the provisions of the Vital Statistics Act 24-14-1 to 24-14-31 NMSA 1978 as amended, or refuses to perform any of the duties imposed upon him or her by that act.

B. Any person who willfully and knowingly permits inspection of or discloses information contained in vital statistics records of adoptions or induced abortions, or copies or issues a copy of all or part of any record of an adoption or induced abortion, except as authorized by law, is guilty of a fourth degree felony and shall be sentenced in accordance with the provisions of the Criminal Sentencing Act 31- 18-12 to 31-18-21 NMSA 1978 as amended.

[7.2.2.24 NMAC - Rp, 7 NMAC 2.2.23, 12/30/2010]

7.2.2.25 COURT ORDERS:

A. Court orders received by the bureau which order the amendment or creation of a vital records which are inconsistent with information known or maintained by the bureau may require the formal or other challenge of such if the bureau was not given notice of the related hearing or otherwise made aware of the proceeding prior to receiving the court order or was not provided with supporting documentary evidence relied on

by the court to support its findings. Such action is necessary to protect the integrity and accuracy of the vital records held by the state registrar pursuant to state law.

B. The bureau will work cooperatively with tribal courts and authorities to meet the requirements of state law and the needs of the tribes.

[7.2.2.25 NMAC - 7 NMAC 2.2, 12/30/2010]

HISTORY OF 7.2.2 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the state records center: HSSD 70-3, Amendment of Regulations Governing Preservation, Disposition, Transportation, Interment and Disinterment of Dead Human Bodies, filed 2/17/70.

HSSD 77-7, Regulations Governing the Reporting, Transporting, Storing, Preserving and Disposing of Dead Human Bodies and Fetal Remains (Stillborns), filed 10/12/77.

HED 79-HSD-3, Regulations Governing the Disposition of Human and Fetal Remains, filed 10/11/79.

HSSD 77-5, Regulations Governing the New Mexico Vital Statistics Act, filed 7/26/77.

HSSD 77-6, Regulations Governing the Reporting, Filing and Use of Reports of Induced Abortion, filed 8/9/77.

HED-82-5 (HSD), Vital Statistics Regulations, filed 7/28/82.

HED 89-7 (PHD), Regulations Governing New Mexico Vital Records and Statistics, filed 8/21/89.

History of Repealed Material:

7 NMAC 2.2, Vital Records and Statistics (filed 10/18/96) repealed 12/30/2010

Other History:

HED 89-7 (PHD), Regulations Governing New Mexico Vital Records and Statistics (filed 8/21/89) was renumbered, reformatted, amended and replaced by 7 NMAC 2.2, Vital Records and Statistics, effective 10/31/1996.

7 NMAC 2.2, Vital Records and Statistics (filed 10/18/1996) was renumbered, reformatted and replaced by 7.2.2 NMAC, Vital Records and Statistics, effective 12/30/2010.