

BIRTH REGISTRATION WORKGROUP MEETING NOTES

December 9, 2015

Regular text = paraphrased discussion

Italics=Department's response

Bold, italics, and indented=rule with changes highlighted

R9-19-101(35)

A comment was made that the definition of “tribal community” should be revised to reflect Federal recognition of the tribe.

The Department will change the definition as follows:

22-35. "Tribal community" means a tract of land held by an Indian tribe recognized and eligible for funding and services from the U.S. Bureau of Indian Affairs by the Federal Bureau of Indian Affairs Office of Federal Acknowledgement under 25 CFR Part 83.

R9-19-103(A) and (B)

A question was asked about why a certificate of still birth is not listed under subsections (A) or (B).

A certificate of stillbirth is issued upon request using the information in a registered fetal death record. Registering a fetal death is included in subsections (A)(1) and (B)(1). Issuing a certificate of stillbirth is included in subsection (A)(5) and (B)(5).

R9-19-105

A question was asked why the Section “Removal of local registrar” is being removed from the rules.

The removal of a local registrar is already covered in A.R.S. § 36-311(C) and does not need to be in rule.

R9-19-105(C)

A question was asked about whether the definition of “agency” in A.R.S. § 41-1001 includes tribes.

The definition of “agency” in A.R.S. § 41-1001 is:

- 1. "Agency" means any board, commission, department, officer or other administrative unit of this state, including the agency head and one or more members of the agency head or agency employees or other persons directly or indirectly purporting to act on behalf or under the authority of the agency head, whether created under the Constitution of Arizona or by enactment of the legislature. Agency does not include the legislature, the courts or the governor. Agency does not include a political subdivision of this state or any of the administrative units of a political subdivision, but does include any board, commission, department, officer or other administrative unit created or appointed by joint or concerted action of an agency and one or more political subdivisions of this state or any of their units.*

This definition does not appear to include tribes.

R9-19-201(A)

A question was asked about whether an adoptee can get access to the information in the adoptee’s birth record that is not on the adoptee’s certificate of birth registration.

According to A.R.S. § 36-337(A)(1), the State Registrar shall amend the registered birth record for an individual born in Arizona upon receipt of an adoption certificate or a court order for adoption, except as provided in subsection (D) of the statute. According to subsection (G) of the statute, if the State Registrar amends a registered birth record for an individual, the State Registrar shall seal the original registered birth record. Therefore, an adoptee would not have access to the information in the original registered birth record.

A question was asked about how the rules address same-sex marriage and same-sex parents.

The rules follow statutes when specifying information/requirements regarding maternity or paternity. R9-19-208(L) provides for entering the names of two persons of the same sex as an individual's parents or the individual's mother and father upon receipt of a court order or a certificate of adoption. Where possible, the gender-neutral term of “parent” is used in the rules.

R9-19-201(A)(3) and (4) and (B)

A question was asked about why the phrase “is willing and able to provide the information” is used for a birth attended outside a hospital by a physician, registered nurse practitioner, nurse midwife, or midwife.

The phrase is used in the rules because of the wording of A.R.S. § 36-333(C), which states that the health care provider present at a birth “who is willing and able to do” shall collect and submit the information required for birth registration.

R9-19-201(B)(2)(d)

A question was asked about why this requirement is included in the rule under subsection (B), but does not seem to be included under subsection (A).

Although the worksheet is not changing due to the rulemaking, some of the information requested on the worksheet is being grouped into a term that is being used in the rule. For example, “characteristics of labor and delivery” is listed in the draft rules as subsection (A)(4)(g)(ii) and, according to the worksheet, includes information such as whether labor was induced or was augmented, whether there was a non-vertex presentation, information about fetal intolerance of labor, and whether clinical chorioamnionitis was diagnosed during labor or the mother's temperature was 38 °C or higher during labor.

R9-19-203(A)

A question was asked about what happens if parents refuse to provide information required in the rule. A comment was made that the minimum necessary pieces of information required to obtain a certificate of birth registration should be put into the rule.

Except as otherwise required by statutes, the information required in the rule for birth registration is generally consistent with the information required by the federal Model State Vital Statistics Act and Model State Vital Statistics Regulations. As such, the information requested from parents would likely be the same, regardless of the state in which an individual was born. Some of the information is required for the individual’s certificate of registered birth registration. Other information is used collectively and without personal identifiers to identify public health issues and monitor the effects of public health programs. All of the information required in the rule is necessary. However, the Department understands that sometimes some of the information may be unknown, and there is a place on the Birth Worksheet, where applicable, that this can be indicated. If a parent refuses to provide a piece of information after a health care provider has explained the requirement and the rationale behind the requirement, the health care provider is encouraged to submit the information that has been provided, along with an indication that a parent has refused to provide other information. The State Registrar, local registrar, or deputy local registrar will review the information submitted/explanation as provided in R9-19-103 and determine whether or not to register the birth.

R9-19-203(B)(2)

A question was asked about whether a local registrar/deputy local registrar should be added.

This subsection is for quality assurance/enforcement activities. Although the State Registrar may delegate some activities to some local registrars/deputy local registrars, the State Registrar retains responsibility and authority for these activities. No change will be made to the rule.

A comment was made that 48 hours after a request is not enough time, especially since it could cover a weekend. In a small practice, the practitioner could be out of the office for several days at a time. The comment was made that seven days would be more appropriate.

If a physician, registered nurse practitioner, nurse midwife, or midwife were requested to provide a copy of the written statement, it would generally be due to a time-sensitive issue that had arisen, so allowing seven days would not be appropriate.

To account for weekends, the Department will change the rule as follows:

- 2. Provide a copy of the written statement to the State Registrar for review within two business days after the time of the State Registrar’s request, where a business day is a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a state holiday or a statewide furlough day.**

R9-19-203(C)

A question was asked about why a request for registration of a birth needs to be made within seven days. A comment was made that a request made within seven days on which there are clerical errors is rejected and, when the errors are corrected, marked as late.

The time-frame for requesting the registration of a birth is specified in A.R.S. § 36-333 and cannot be changed in rule. If a request for registration of a birth is made within seven days, the request is timely, regardless of whether there are clerical errors which do not allow the birth to be registered. According to A.R.S. § 36-333.01, if the request for registration of a birth and the required evidentiary documents are submitted more than seven days and less than one year after a birth, the birth would be registered as a late birth registration. To clarify requirements for a request for registration of a birth that is submitted timely, but is incomplete, the Department will change the rule as follows to add a new subsection (G):

G. If the State Registrar or a local registrar or deputy local registrar determines that a request for registration of an individual's birth submitted according to subsection (C) or (D):

- 1. Contains the required information and, if applicable, evidentiary documents, the State Registrar, local registrar, or deputy local registrar shall establish a birth record for the individual and register the individual's birth; or***
- 2. Does not contain the required information or applicable evidentiary documents, the State Registrar shall:***
 - a. Not establish a birth record for the individual or register the individual's birth; and***
 - b. Provide written notification to the person who submitted the request, according to R9-19-103:***
 - i. Specifying the missing, incomplete, false, or invalid information or evidentiary documents; and***
 - ii. Informing the person that the person has:***
 - (1) For a request submitted according to subsection (C), until 30 days after the individual's birth to provide the required information; or***
 - (2) For a request submitted according to subsection (D), until one year after the individual's birth or 30 days after the date of the written notification in subsection (G)(2)(b), whichever is later, to provide the required information or evidentiary documents.***

R9-19-204

A question was asked about what information is submitted to indicate that a birth occurred at home, but the placenta was delivered at a hospital.

The Department is still considering this question.

R9-19-204(I)

A comment was made that an "individual is a member of a tribe" rather than belonging to the tribe. Another comment was made that subsection (I)(2)(f) is unnecessary since an individual born before 1970 would be of legal age. A question was asked about the location of requirements for tribal enrollment. A comment was also made about the information requested in rule not matching the information required in the recent substantive policy statement on delayed birth registration for Native Americans born before 1970.

The Department agrees that the wording of the rule should be changed to indicate that an individual is a member of a tribe and to remove subsection (I)(2)(f). The rule requires the submission of tribal documents in subsection (I)(4), stating that at least one of the evidentiary documents submitted to support the delayed registration of the individual's birth is required to be a copy of the individual's official tribal enrollment.

The requirements in the substantive policy statement and the draft rules are generally consistent. Any inconsistencies between the rule and the substantive policy statement arise from an effort to make sure that the information provided by the individual requesting the delayed birth registration is sufficient to allow the Department to match up names, search for an existing registered birth record, and produce a certificate of delayed birth registration that is consistent with other certificates of birth registration, as well as find the individual's birth record within the electronic birth registration system at a later date and provide a copy to the individual.

An individual born before 1970 may have changed names, such as through marriage, from the name the individual had at birth. The individual's name before first marriage is included on the individual's certificate of

delayed birth registration, but to obtain a copy, the individual would need to produce a document showing that he/she is the individual whose certificate of delayed birth registration is being requested. By providing the current name, the individual would be better able to produce this documentation. The name before first marriage of the individual's mother and her date of birth would also be needed for the individual's certificate of delayed birth registration, but the individual's tribal enrollment documentation or other evidentiary documents submitted may show a different name for the mother. Therefore, both names for the mother are being requested. In addition, to search the electronic birth registration database for the individual's birth record, the name before first marriage and date of birth of the mother are often used. Without this information, it would likely be difficult to find the individual's birth record. The Department has similar reasons for requesting not only the name, but also the date of birth, of the individual's father.

The substantive policy statement requires the individual's name, date of birth, and place of birth, as well as the names of the individual's parents to be included in the documentation submitted, and does not address information requested from an applicant. The draft rules require the individual's current name and name before first marriage, sex, date of birth, and place of birth; the name before first marriage, current name, and date of birth of the individual's mother; and the name and date of birth of the individual's father to be included in the documentation. The Department understands that not all of this information may be included in a copy of the individual's official tribal enrollment. Therefore, the Department will change the rule as follows:

- I. If an individual's birth occurred in Arizona before 1970, the individual is a member of a tribe recognized by the Federal Bureau of Indian Affairs' Office of Federal Acknowledgement under 25 CFR Part 83, and the individual's birth is not registered, the individual or the individual's guardian may request the registration of the individual's birth by submitting to the State Registrar:**
 - 1. A "Certificate of No Record" for the individual issued by the State Registrar, dated not more than five years before the date the request in this subsection is submitted;**
 - 2. The following information, in a Department-provided format:**
 - a. Whether the individual has a registered birth record from another state or country;**
 - b. If the individual has a registered birth record from another state or country, the state or country that issued the individual's registered birth certificate;**
 - c. The individual's:**
 - i. Current name;**
 - ii. Name before first marriage;**
 - iii. Sex;**
 - iv. Date of birth; and**
 - v. Town, city, or county where the individual's birth occurred;**
 - d. The individual's mother's:**
 - i. Name before first marriage,**
 - ii. Current last name, and**
 - iii. Date of birth;**
 - e. The name and date of birth of the individual's father; and**
 - f. An affidavit, attesting to the validity of the information required in subsections (I)(2)(a) through (e), signed by:**
 - i. The individual; or**
 - ii. If applicable, the individual's guardian or the person who has custody of the individual;**
- 4. Except as provided in subsection (J):**
 - a. A copy of the official tribal enrollment, issued by the Tribal Authority of the federally recognized tribe and certified by the Tribal Authority, containing:**
 - i. The individual's:**
 - (1) Name before first marriage;**
 - (2) Date of birth; and**
 - (3) Town, city, or county where the individual's birth occurred;**
 - ii. The individual's mother's name; and**
 - iii. The individual's father's name; and**
 - b. One or more other evidentiary documents that support the information provided according to subsection (I)(2)(c) through (e); and**

R9-19-204(M)

A question was asked about whether a court order would include one issued by a tribal court.

Yes, the definition of “court order” in A.R.S. § 36-301 includes decisions issued by the judge of a tribal court in this state.