



OFFICE OF ATTORNEY GENERAL MARK BRNOVICH

**STATE GOVERNMENT DIVISION
EDUCATION AND HEALTH SECTION**

MEMORANDUM

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TO: Krystal Colburn, Bureau Chief, Bureau of Vital Records

FROM: Trish LaMagna

DATE: September 1, 2017

RE: Authority to Create and Issue Report of Fetal Loss

ADHS is authorized by statute to “[o]rganize, operate and maintain the only system of vital records” in Arizona and “[d]irect and supervise the creation and registration of vital records, electronically and physically, and be the custodian of vital records.” A.R.S. § 36-302(B)(3) and (4). A “vital record” is defined as “a registered birth certificate or a registered death certificate.” A.R.S. § 36-301 (34). The legislature gives ADHS specific guidance as to the types of births and deaths they may register, therefore they are required to follow that guidance and their rules must reflect this grant of authority. *See* A.R.S. § 41-1030(C)(“An agency shall not...[m]ake a rule under a specific grant of rulemaking authority that exceeds the subject matter areas listed in the specific statute authorizing the rule” or “[m]ake a rule under a general grant of rulemaking authority to supplement a more specific grant of rulemaking authority.”)

The system of death registration authorized by statute authorizes ADHS, through the Bureau of Vital Records (BVR), to create and register the following:

- **Death Certificate** under A.R.S. § 36-325, which directs a funeral establishment or responsible person who takes possession of the body to submit information to BVR for registration of the death.

- **Fetal Death** pursuant to A.R.S. § 36-329, for death of a fetus “after a gestational period of twenty completed weeks or if the product of human conception weighs more than three hundred fifty (350) grams.”
- **Certificate of Birth Resulting in Stillbirth** pursuant to A.R.S. § 36-330, “for each fetal death occurring in this state after a gestational period or at least twenty completed weeks.”
- **Delayed Certificates of Death, Fetal Death and Birth Resulting in Stillbirth** A.R.S. §§ 36-325.01, -329.01, and -330.01 authorize BVR to create delayed versions of these certificates.
- **Foreign Presumptive Death** pursuant to A.R.S. § 36-328, when BVR “receives a court order issued in this state of a presumptive death of a resident of this state in a foreign country.”

Because the legislature specifically noted these types of death certificates were authorized, a certificate for a fetal loss or stillborn birth *before* twenty weeks gestation was completed or weighing less than 350 grams is not authorized under any vital records statute. Furthermore, the requirement to obtain a disposition-transit permit before final disposition specifically does not apply when “[t]he gestation period of the product of human conception is less than twenty weeks or, if the gestation period is unknown, the weight of the product of human conception is less than three hundred fifty grams.” A.R.S. § 36-326(F).