

MDH Minnesota
Department of Health
OFFICE OF VITAL RECORDS
m e m o

DATE: November 22, 2016

TO: Legislative Commission on Surrogacy

FROM: Molly Crawford, State Registrar for the Office of Vital Records

SUBJECT: Information and Technical Assistance for the Legislative commission on Surrogacy Meeting Follow Up

Background

The Minnesota Department of Health (MDH), Office of Vital Records (OVR), was asked to review information that the commission is considering regarding surrogacy because parentage is recorded on Minnesota birth records.

Minnesota law requires that births be registered within five days of the birth event. Up to two parents may be listed as parents on a subject's birth record. Health and medical information as well as demographic and legal information are collected from parents at the time of their child's birth. A birth certificate is a legal document that contains a subset of data (certification items) from a birth record.

OVR reviewed the document, "Surrogacy Commission Issues" paying special attention to the section that is specific to birth certificates on page 5. Bullet points from the document along with information from OVR are listed below:

If surrogacy contract certified or validated by court (or recognized in a subsequent paternity proceeding governing enforceability of contract) intended parents' names appear as parents on original birth certificate.

It is important to note the difference between a birth certificate and a birth record. A certificate is a legal document that contains minimal information from a birth record. A birth record has more than 90 data elements. Only a small number of these data elements are "certification items" that print on a birth certificate.

The data elements on a birth record include both health/medical information on parents and the subject of the record as well as demographic/legal information. For public health purposes, the CDC's National Center for Health Statistics recommends that medical and health related information be collected and registered for the woman who gives birth and the biological parent of the child. The National Center for Health Statistics contracts with jurisdictions, including Minnesota, under the Vital Statistics Cooperative Program to register births and transmit de-identified data for public health statistics and research purposes.

In Minnesota, health and medical data on birth records is classified as private information. If Minnesota law were to require that only the intended parents' names appear as parents on the original birth certificate, OVR would:

- Confirm that it is only the CERTIFICATE that is required to list the intended parents. The law should be clear on how the birth information should be registered on the entire record. For example, some jurisdictions record the health and medical information of the woman who gave birth along with the biological father's information, but indicate the intended parents as the legal parents. The intended parents' names would appear as the parents on the child's birth certificate.
- If the law is clear that only intended parents are registered on the birth record, OVR would be required to deviate from the National Center for Health Statistics' national standard by NOT collecting and storing health/medical information on the biological parents and reporting that de-identified information to the National Center for health statistics purposes. In addition, this would also mean that there would be no health or medical information about the biological parents for the subject to access in the future.
- If the certificate is treated differently from the birth record, OVR would need to modify its existing vital records electronic application (The Minnesota Registration and Certification System or MR&C) to allow data to be collected from different parents and stored safely and securely—health and medical data for the biological parents on the birth record and legal information/certification items on the intended parents.
- Assure that what the law requires is communicated clearly and professionals involved in birth registration are trained so that births are registered timely and accurately and so that families involved with surrogacies understand and have realistic expectations for the birth record and certificate.

Specify circumstances, if any, under which either birth certificate or other record would indicate that there was a surrogate.

The MDH electronic vital records application, MR&C, has a check-box included in the birth registration process to indicate if the birth was an outcome of a surrogacy agreement. This data element is currently used only when a certified pre-birth court order that directs the record to be registered without health and medical information for the biological parent is presented to hospital staff at the time of the initial birth registration. The check-box explains why the health and medical information is registered as "unknown." Because the number of pre-birth court orders presented at the time of birth is so small, there is no impact to vital statistics used for public health purposes. The birth certificate itself does not indicate surrogacy.

When a birth record that is already filed has to be changed later, as in the case of an adoption or a surrogacy arrangement that is finalized post-birth, OVR receives a certified copy of the court order and changes the existing birth record. OVR "replaces" the existing record with new demographic/legal information and removes the parents' health and medical information from the current record. A replacement essentially "seals" the original birth record. Only certain OVR staff with a business need for the information have access to the sealed record. The replaced record does not indicate surrogacy. Further, there is no indication on the certificate that prints from the replaced record that the change occurred or that it is because of a surrogacy. OVR sends de-

identified health and medical information to the National Center for Health Statistics daily as births are registered. Thus, with replaced records, there is no impact to statistics for public health purposes because parents' health and medical information was previously sent.

If the law intends for data to be collected on all surrogacies, programming changes would need to be made to the MR&C System to allow for a new data element to be collected.

Right of child to obtain access to information, similar to adoption record process.

Information about intent and scope is unclear in the document, in particular whether the intent is for the child to have access just to the identity of the surrogate or to health and medical information about the surrogate or donor. Currently, the subject (child) does not have access to the parent health and medical information that exists on the original birth record—that data is private and available only to the subject of the health/medical data (mother/father). This is true whether or not the child is adopted. Unless the child presents a court order for such data, the Office of Vital Records does not release it to adoptees. Parents who sign an affidavit of disclosure are allowing only the demographic/legal data portions of the original certificate of live birth to be released to an adoptee, not the health information.

In addition, depending on how the Minnesota law would specify the registration of the birth and how data may or may not be collected on the woman who gave birth or the genetic parents, health and medical information may not be available to share with a child. If a pre-birth order requires the initial birth record to be registered with only the intended parents' information, no health/medical information would be registered for the woman who gave birth or the biological parents. The result would be that there would be no "original record" to get or share.

In general, current processes related to adoptee access to original birth records are complicated at best. Information and disclosure practices have changed over time. There are disclosures and non-disclosures that have been filed with OVR that are stored and maintained. There are processes to follow between MDH and DHS for searches for birth parents in order to ask them about any change of mind for their non-disclosure statements—this ask alone can be very disruptive to the birth parents. There are costs to the adoptee for searches and there is no uniform process to do this. The current system has gaps, creates inequities, and is cumbersome to oversee and operate. If surrogacies use the adoption process as a model, OVR would have costs/resources that would have to be assigned to this work.

Special considerations regarding access to donor family medical history information.

Information about this is unclear in the document. Minnesota law should specify what information would be collected, who or what agencies have responsibility for storing the medical histories and information and for what length of time, and who would have authority to access it. OVR currently stores only the data that is collected in association with the birth record, and as noted above this information is classified as private. MDH does not store family medical histories. DHS does collect and store information about family medical histories for adoption cases. If the law requires OVR to collect medical histories from the woman who gave birth and from any genetic parents and store that information for future retrieval, additional resources would be necessary. Further, collecting any data beyond what is required to register a vital event would be an unusual birth records

activity or responsibility, and both the purpose and format of this information and the rights of individuals to have access to it, would need to be clearly defined.

Additional thoughts

Parentage

As medical technology and practices change, multiple people can be involved in creating a child. The list of individuals who may have a biological connection to a child is growing: human eggs may actually contain DNA from two different women, a man may be a donor, another woman may carry the child, and any of those people listed may have spouses. There may be parentage claims and considerations for all of these people before the intended parents are recognized legally, and many of those legal issues are beyond the expertise of OVR.

However, if the law requires collection of medical and health information from all people involved in the biology of a pregnancy and delivery, significant changes will be necessary in Minnesota vital records statutes, rules and systems. Minnesota birth registration currently allows for up to only two parents to be listed on a child's birth record. This is also true for death records—up to two parents may be listed on a subject's death record. Because of the changes to medical technology related to surrogacy described above, some other jurisdictions are moving to allow more than two parents to be listed on a birth record and are revising their birth certificates to simply label the section "parentage" and list the parents in alphabetical order. The commission will need to be clear in defining 'parentage' for the purposes of births that involve surrogacy, so that information on birth records, birth certificates, and other vital documents is collected and stored consistently and carefully, and may want to reach out to other jurisdictions to learn how they have dealt with similar issues.

Stillbirth tax credit

Beginning this year, 2016, there is a new tax credit of \$2,000 available to parents who have a stillborn child in Minnesota. The document provided from the Commission has notations about the possible death of an intended parent, but it doesn't address a fetal death or stillbirth. The tax credit requires a Certificate of Birth Resulting in Stillbirth to be obtained by the parents. OVR issues the certificate only to the parents who are listed on the fetal death report. The commission will also need to consider how parents are listed on fetal death reports in these situations.

Other considerations

In Minnesota, parents may elect to participate in the "Enumeration at Birth" program at the time of their child's birth. About 96 percent of Minnesota births have parents who authorize OVR to send data about their child's birth to the Social Security Administration so that the child is assigned a Social Security Number and issued a card. This means that parentage information is on file with the Social Security Administration. Information from later birth record replacements is not shared with the Social Security Administration.

Legal parentage as listed on a subject's birth record is also important for the purposes of survivor benefits, VA benefits, etc., in addition to inheritance as well as tribal membership and tribal benefits. The commission will also need to consider any potential ramifications of a change to parentage definitions on these and other programs that rely on birth records and that currently only recognize two parents.