



Same-Sex Parenting – Birth Certificate FAQs

On May 31, 2016, the Pennsylvania Department of Health issued guidance to hospitals advising them that, for pregnant same-sex female couples who are married at the time of birth, the hospital should list both spouses as their child's parents on their child's birth certificate.

What does this announcement mean?

It means that if you are pregnant and married, the same procedures and policies about birth certificates apply whether your spouse is a man or a woman. So if you are pregnant and married to a woman, when you give birth, you can put both your name and your wife's name on the child's birth certificate without any questions asked.

Why is the Department of Health's guidance limited to married same-sex female couples?

Under Pennsylvania law, a woman who carries a child and gives birth to a child is the presumed parent of the child. When she is married, her spouse is legally presumed to be the other parent of that child from birth—regardless of whether both spouses have a biological relationship to the child. This legal presumption of parentage has applied to different-sex married couples for years. Now that Pennsylvania is a marriage equality state, this legal presumption should apply to the spouse of any married woman who gives birth to a child, whether her spouse is a man or a woman.

If we're both on the birth certificate, we don't need to do an adoption, right?

Unfortunately, that's not necessarily the case. Having your name on your child's birth certificate is not always enough to fully protect your rights as a parent. A birth certificate is not a definitive legal determination of your parenthood. Until the law in this area is more settled, all couples (same-sex or different-sex) who conceive using donors should still do an adoption in order to guarantee full legal recognition for both parents—even if you're married, and even if you're both on the birth certificate. The marital presumption of parentage is a legal assumption that could potentially be challenged if you do not have a biological connection to your child. Without a decree or order of adoption, some courts may not recognize a non-biological parent's parental rights based solely on marriage and being on the child's birth certificate. With an adoption decree, your parental rights are secured and will be recognized in all jurisdictions. The adoption process will be slightly different for each family, depending on each person's biological relationship to the child and on the parents' marital status, but all families should consider this need and consult an attorney to determine the best option for their situation.

Do same-sex married couples have to do more paperwork than similarly situated different-sex couples in order for both parents to appear on our child's birth certificate?

No. Same-sex couples should be treated the same as similarly situated different-sex couples both in terms of what is required in order to be listed on the birth certificate and in terms of what kind of documentation of their family relationship they must produce. In other words, if a married different-sex couple wouldn't be asked to prove that they are married by producing a copy of their marriage certificate, a similarly situated married same-sex couple shouldn't be asked to do this, either. Additionally, the adoption process for same-sex and different-sex couples who conceive using donors is exactly the same.

We are using a gestational carrier. Can we go on our child's birth certificate without a court order?

No. When the woman who gives birth to a child is not one of the child's intended parents, the intended parents must either obtain a pre-birth court order or complete a post-birth adoption proceeding resulting in a court order in order to be listed on the birth certificate. This is true of any couple—whether same-sex or different-sex—who uses a gestational carrier.

Why do some parenting same-sex couples have to get a court order before they can be listed on the birth certificate?

Some couples (both same-sex and different-sex couples) who conceive using Assisted Reproductive Technology (ART) have to get a court order declaring them to both be parents. This depends on each parent's biological relationship to the child, as well as the couple's marital status. All couples who use a gestational carrier must obtain a court order in order to be listed on the birth certificate. And unmarried couples who conceive using donor sperm need an adoption decree before the non-biological parent can be listed on the birth certificate.

What kind of gender labels are used to identify a child's parents on the birth certificate?

Currently, Pennsylvania birth certificates identify one parent as "mother/parent" and the other as "father/parent." Pennsylvania is working on transitioning its vital records systems to non-heteronormative language that will label all parents as "mother/father/parent." Because birth certificates are official records that are relied on in determining citizenship and for other important security purposes, birth certificates need to be standardized—the labels on individual birth records cannot be manually altered. When the switch to a non-heteronormative system is accomplished, parents will be able to obtain birth certificates that will have the new parental labels.

Who should I talk to if I have more questions about birth certificate issues, or if the hospital doesn't follow these rules?

The Department of Health's recent guidance about birth certificates for same-sex female couples asks each Pennsylvania hospital to designate a point person for handling questions about this issue. In addition, please contact the ACLU of Pennsylvania if you have any concerns or problems with a hospital recognizing your marriage. If you have questions, you can email us at info@aclupa.org. To file a complaint, call **(877) 745-2258** or visit our website: <https://www.aclupa.org/complaint>.

Who can I contact to get individualized legal advice for my family (or help with a pre-birth order or an adoption)?

Mazzoni Center's Legal Services Department provides direct services to LGBT individuals in these and other areas of law, and can also make referrals to other LGBT-sensitive attorneys in Pennsylvania who can assist you with your unique legal issues. You can email Mazzoni Center at legalservices@mazzonicenter.org or call **866-LGBT-LAW (542-8529)** for more advice on your individual situation. No matter whom you see for legal advice, make sure that person has experience representing LGBT couples.

ACLU of Pennsylvania
www.aclupa.org

Requests for legal assistance: 877-745-ACLU (2258) or www.aclupa.org/complaint

For general information: Eastern Office: 215-592-1513 • info@aclupa.org
Western Office: 412-681-7736 • pghinfo@aclupa.org
Central Office: 717-238-2258 • hbginfo@aclupa.org