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Contra Costa County Employees' Retirement Association

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Laws Related to Closed States Death Reporting

November 11, 2026

Questions With Answers

What are vital records and how are they maintained?

Why is it hard to get accurate records for members living in certain states?

What does Social Security do and why don't they share their data with us?

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Vital Records

Vital records are those official records held by federal, state and local governments related to major life events.

- Birth
- Adoption
- Marriage
- **Death**

Most state governments have a specific office that maintains vital records, such as the California Department of Public Health Office of Vital Records.

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Death Records and Registration

California Health and Safety Code Division 102, Part 1, Chapter 6 – Death Registration

Funeral director or coroner registers death with the County Clerk-Recorder and Registrar Offices.

Local registrar uploads data electronically and it is captured by the state registrar and maintained by the Department of Public Health – Vital Records.

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Why Do Pension Systems Need Death Records?

- **Promptly discover when a member/beneficiary has died**
  - **Avoid overpayments**
  - **Avoid waste**
  - **Avoid fraud**
  - **Preserve funds for the exclusive benefit of members**

"The assets of a public pension or retirement system are trust funds and shall be held for the exclusive purposes of providing benefits to participants in the pension or retirement system and their beneficiaries and defraying reasonable expenses of administering the system."
California Constitution Article XVI, Section 17(b)

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Who Else Needs Vital Records?

Any agency or business that has an interest in major life events has an interest in obtaining vital records.

- Healthcare systems (private and public)
- Government bureaucracies (IRS, SSA, Medicare)
- Benefits providers (private and public)
- Researchers (public health, genealogy, demography)
- Family members and decedents

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How Do Pension Systems Currently Obtain Death Records?

- Notification by next of kin.
- Third Party vendors who obtain death records through various proprietary sources.
  - Death records in California and several “open states” are publicly available and easily obtained by vendors.
  - Obituaries and funeral publications are searched digitally, along with social media and data brokers
- Seeking them directly from foreign state governments?

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Closed States

A “closed state” is a state with laws or procedures that limit access to death records.

31 states plus the District of Columbia have confidentiality statutes regarding vital records. Most closed states do not share recent death records with third party vendors.

All three states bordering California are closed states.

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What Do Third-Party Vendors Miss?

There are two common situations that get missed by vendors:

- People dying in closed states to little fanfare/without leaving survivors
  - When eventually discovered, the funds are likely returned by the financial institution.
- People dying in closed states with survivors intentionally obfuscating their deaths to fraudulently continue receiving benefits.

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What About the Federal Government?

- The Social Security Administration (SSA) obtains death records from several sources:
  - Contracts with state governments. Social Security Act, Section 205(r)(1) [42 U.S.C. 405(r)(1)].
  - Directly from funeral homes across the USA.
- SSA maintains death records in Death Master File (DMF)
- The National Technical Information Service (NTIS) disseminates DMF data on behalf of the SSA to other federal bureaucracies and state governments.

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Limited Access Death Master File

- Prior to 2014, NTIS provided death records to agencies such as pension systems and/or vendors

- Section 203 of the Bipartisan Budget Act of 2013 forbade the federal government from sharing death records less than three years from the decedent's death, except to persons certified to receive such records, with stiff penalties imposed on persons inappropriately accessing or disseminating DMF data.

https://www.govinfo.gov/content/pkg/PLAW-113publ67/html/PLAW-113publ67.htm

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Limited Access Death Master File

- The final rule for the LADMF certification process was issued in 2016.
- Determined fees sufficient to cover administrative expenses (currently ~$3,000 per application and ~$300/year)
- Established guidelines for triennial independent assessment to verify security protocols

https://www.govinfo.gov/content/pkg/FR-2016-06-01/html/2016-12479.htm

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Limited Access Death Master File

In theory, the certification process should allow vendors, data brokers and government agencies to obtain DMF data provided they have:

(i) a legitimate fraud prevention interest, or

(ii) a legitimate business purpose pursuant to a law, governmental rule, regulation, or fiduciary duty, and

(B) has systems, facilities, and procedures in place to safeguard such information, and experience in maintaining the confidentiality, security, and appropriate use of such information, pursuant to requirements similar to the requirements of section 6103(p)(4) of the Internal Revenue Code of 1986, and

(C) agrees to satisfy the requirements of such section 6103(p)(4) as if such section applied to such person.

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Limited Access Death Master File

In practice, the LADMF certification process is unduly onerous and the penalties sufficiently draconian ($1,000 per each unauthorized disclosure or use) that it has left county pension systems unable to access DMF records and larger bureaucracies unwilling to share DMF data.

Since 2014, NTIS has not shared DMF data regarding closed states with pension system vendors.

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Types of Closed States

1. Closed to general public, but not to a qualified vendor with a bona fide public purpose (these are not “closed states” to CERL systems, but “closed” to certain other entities).
2. Closed to vendors, but not to government agencies (government agency exception) or have another exception which can be applied to CERL system (pension exception, benefits exception, “property interest” exception, etc.)
3. Closed to everyone.

Getting Records Directly From Closed States

Closed states that offer exceptions to government agencies each have their own prescribed process for obtaining death records.

These records need to be ordered individually (potentially useful if looking at a finite number of members).

Sometimes the law appears more generous than the process prescribed by the state bureaucracy.

Example: Oregon Law

Oregon Revised Statutes Section 432.380(2)(c)(B)(iii):

If the applicant is requesting a certified copy of a record of death, the decedent's spouse, domestic partner who is registered by the state, child, parent, sibling, grandparent, grandchild, next of kin, legal guardian immediately before death or legal representative, an authorized representative, a person in charge of disposition, a government agency acting in the conduct of its official duties, an employee or agent of a funeral home or person acting as a funeral service practitioner who is named in the record of death or a person that demonstrates to the satisfaction of the state registrar that the certified copy is necessary for a determination related to or the protection of a personal or property right of the applicant;

Example: Oregon Process

For verification requests The Oregon Health Authority offers up to five (5) free verification requests per month per government agency.

When submitting a request, please include:

- The completed Verification Order Form
- A photocopy of your agency badge or ID for verification

Email: chs.agencies@oha.oregon.gov

Mail: PO Box 14050, Portland, OR 97293-0050

Fax: 971-673-1203

If additional information is needed, the Oregon Health Authority Center for Health Statistics may reach out to the requestor by secure email or mail. If you have not received an email or your verification documents after 18 business days, please contact the agency directly.

OREGON HEALTH AUTHORITY

Verification of Oregon Vital Record Facts for Federal, State, and County Government Agencies

Reset Form | Print

Submit completed form to:

Center for Health Statistics
PO Box 14050
Portland OR 97293

Fax: 971-673-1203

Email: CHS.Agencies@oha.oregon.gov
(Send by secure mail only.)

Submit a copy of photo ID with the form.
Acceptable ID includes agency or military ID.



Type of record: ☐ Birth ☐ Death ☐ Marriage ☐ ORDP ☐ Divorce/Dissolution

Name of Registrant: _____ DOB: _____ (Death only)

Spouse/Partner: _____ (Marriage/ORDP/ Divorce/Dissolution only)

Date of event: _____ County of event: _____

Mother/Parent A name given at birth: _____ (Birth only)

Father/Parent B name given at birth: _____ (Birth only)

This section is for use by the Vital Records Unit:

_____ Record is filed with the information exactly as stated above.

_____ Record is filed with corrections as noted above.

_____ No Record was found.

_____ Unable to verify with information provided.

_____ Event is too recent. The record may not yet be filed with the state.

State File Number:

Verified by:

Date:

By law (ORS 432.380), verification of vital record information can be provided to government agencies for the conduct of official duties. **Requests are processed and mailed within five workdays of receipt.**

Verification is free to agencies requesting five (5) or fewer verifications per month. The fee is $10 per verification when more than five are received in a month. Payment can be made to: OHA/Vital Records. Agencies ordering more than 20 verifications per month may request a billing account.

Name of person requesting verification: _____

Agency name: _____

Required: Method of Delivery:

CHOOSE ONE and provide address or number.

☐ Email: _____

☐ Fax: _____

☐ Mail: (mailing address of your agency) _____

_____

_____

(city) (state) (zip)

This form can be downloaded at bit.ly/VerificationVR.

Example: Arizona Law

Arizona Revised Statutes, Section 36-342:

A. The state registrar may provide information contained in vital records to persons, including federal, state, local and other agencies, as required by law and for statistical or research purposes.

B. Except as authorized by law, a local registrar, a deputy local registrar or the state registrar or their employees shall not:

1. Permit inspection of a vital record or evidentiary document supporting the vital record.
2. Disclose information contained in a vital record.
3. Transcribe or issue a copy of all or part of a vital record.

Example: Arizona Law

Arizona Administrative Code, Section R 9-19-314(B)(19):

B. The following are eligible to receive a certified copy of a deceased individual's certificate of death registration:

…

19. A governmental agency processing a financial claim, a governmental benefit application, or another form of compensation on behalf of the deceased individual or the deceased individual's estate or having another official purpose for a certified copy of the deceased individual's certificate of death registration.

Example: Arizona Process

A governmental agency processing a financial claim, a governmental benefit application, or another form of compensation on behalf of a deceased individual's estate or having another official purpose for a noncertified copy of the deceased individual's certificate of death registration may request a noncertified copy of the deceased individual's certificate of death registration by submitting to the State Registrar or a local registrar.

Orders require the decedent's approximate date of death. According to the office of vital records (by phone), if the death is within one year of the date listed on the application (six months earlier or later than the listed date), the record will be retrieved.

Example: Idaho Law

Idaho Code Section 39-270(b):

(b) A complete copy, or any part of a certificate, may be issued to any applicant who can show direct and tangible interest in the record for which he applies. A complete copy, or any part of a certificate, shall be issued upon request or at the direction of the state registrar to a state, federal or local public agency for child protection and child support enforcement purposes or for the purpose of investigation of fraud. Subject to such provisions as the board may prescribe, data contained on records may be used by federal, state or municipal agencies for the purpose of verification of data.

Example: Idaho Process

"For agencies outside Idaho, including public pension systems, Idaho Vital Records can only provide death information through individual death certificate requests. These requests must include specific details such as the decedent's name, date of death, and place of death." Idaho Department of Public Health and Welfare (by email).

The law allows disclosure, but the process makes it impossible.

Questions?