



**NEW YORK CITY
DEPARTMENT OF HEALTH AND MENTAL HYGIENE
BOARD OF HEALTH**

**Notice of Adoption of Amendment
to Article 207 of the New York City Health Code**

In compliance with section 1043(b) of the New York City Charter (“the Charter”) and pursuant to the authority granted to the Board of Health by section 558 of said Charter, a notice of intention (“NOI”) to amend Article 207 of the New York City Health Code (“the Health Code”) was published in the New York City Record on March 19, 2018, and a public hearing was held on April 23, 2018. At the hearing, 15 people testified, many of whom also submitted written comments. In all, 964 written comments were received, 59 of which were signatures to one petition and 827 of which were signatures to a second petition; many of these signatories also submitted their own written comments. After consideration of the comments received, no changes have been made to the proposed amendment. At its meeting on June 5, 2018, the Board of Health adopted the following resolution.

Statement of Basis and Purpose

Background

Adoption of schedule for transfer of vital records

Birth and death records are considered private records. During a person’s life and for an appropriate period after death, birth and death records are protected from being accessed by the general public because they contain individually identifiable information. These records, however, eventually become historical documents of interest to family members and persons researching their ancestries. For these reasons, the Board of Health recently fixed schedules for making these records public and transferring them to the Department of Records and Information Services (“DORIS”): section 207.21 of the Health Code now makes birth records public records after 125 years after birth, and death records public records after 75 years after death.

The schedule set in section 207.21 of the Health Code drew numerous comments from the public. Many of these comments emphasized a keen community interest in third parties being able to access birth and death records prior to their transfer to DORIS. The comments also made a variety of different suggestions, from making all birth and death records immediately available to the public, to releasing birth and death records to family members prior to the records becoming public, to creating a special category for release of records to genealogist. The Department agreed that certain family members should have access to birth and death records prior to the records becoming public, and therefore proposed amending section 207.11 of the Health Code for this purpose. The Board now adopts those amendments. The Department

believes these new provisions will allow family members to access information while protecting the confidentiality of vital records for appropriate periods of time.

Current Administrative and Health Code provisions allowing release of birth and death records

Section 17-169(a) of the Administrative Code delineates who may access birth records. While section 17-169(a)(1) restricts who may obtain a certified copy of a record of birth, section 17-169(a)(2) authorizes the Department to honor requests for certifications of birth when providing the information is “necessary or required for a proper purpose.” As noted below, the Department believes that ascertaining facts related to one’s family history is a proper purpose.

Section 17-169(b) of the Administrative Code provides for access to death records when “necessary or required for a proper purpose.” Section 207.1(b) of the Health Code provides that death records can be made available to the following persons:

- (1) the spouse, domestic partner, parent, child, sibling, grandparent or grandchild of the decedent;
- (2) the legal representative of the estate of the decedent, or the individual identified on a death certificate filed with the Department as the person in control of the disposition;
- (3) a party with a property right who demonstrates to the Department that information beyond the fact of the death of the decedent is necessary to protect or assert a right of that party;
- (4) a funeral director who requests the record or information within twelve (12) months of when the death of his or her client was registered; or
- (5) persons or government agencies who otherwise establish that such records are necessary or required for a judicial or other proper purpose, or to prevent the misuse or misappropriation of City, state or federal governmental funds.

Health Code Amendment

The Board is expanding the group of family members who can access birth and death records prior to their public release. This new group is within a close degree of consanguinity (blood relation) to the individual whose records are sought. Specifically, the Board is expanding the list of relatives given in Health Code section 207.11(b)(1) who can request a death certificate to also include great-great grandchildren, nephews, nieces, aunts, uncles, grandnephews, and grandnieces. The Board is also expanding access to allow spouses, domestic partners, parents of children over the age of 18, children, siblings, nieces, nephews, aunts, uncles, grandchildren, great grandchildren, grandnieces, and grandnephews to request of the certification of birth of a

deceased individual. The Board finds that allowing such access is within the meaning of “proper purpose” as used in the Administrative and Health Codes.

Most of the comments on the proposed rule requested that the Board give additional categories of individuals access to birth and death records prior to their transfer to DORIS. Some comments suggested that professional researchers with no family connection to the people’s histories they are researching should have broad access to birth and death records. Other comments requested that additional family and social relationships be added to the list of individuals with such access. The Department believes that the amendment appropriately balances the privacy and historical interests at stake, does not agree that any additional changes should be made to the amendment. The Board is making these amendments effective January 1, 2019.

Statutory Authority

Pursuant to section 556(c) of the Charter and section 17-166 of the Administrative Code, the Department is responsible for supervising and controlling the registration of births and deaths that occur in New York City. Section 558(c) of the Charter requires the Board to include in the Health Code provisions related to maintaining a registry of births and deaths, as well as provisions related to changes or alterations of any birth or death certificate upon proof satisfactory to the Commissioner of Health and the manner in which these certificates may be issued and otherwise examined. Administrative Code section 17-169 and Health Code sections 3.25 and 207.11 make birth and death records confidential and restrict access to these records beyond certain classes of specified people. Section 207.21 of the Health Code sets the time periods by which birth and death records are transferred to DORIS and become public records. Section 558(b) of the Charter specifically authorizes the Board to add to, alter, and amend the Health Code.

RESOLVED, that section 207.11 of Article 207 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, be amended, to be printed together with explanatory notes, to read as follows:

§ 207.11. Inspection of vital records or data; transcripts.

(a) Except as provided in [§§] sections 201.07, 203.07 [and], 205.07, and 207.21 of this Code, inspection of vital records or data filed with the Department pursuant to this Title may be made and transcripts of records may be obtained pursuant to the provisions of [§] section 3.25 of this Code and [§] section 17-169 of the Administrative Code, respectively. [Requests by governmental agencies, whether foreign or domestic, for certified copies of birth and spontaneous termination of pregnancy records or for certifications of birth pursuant to § 17-169,

or for any individually identifiable information contained in the Department's vital records maintained pursuant to this Title, or for verifications thereof, shall specify the official use to which the requested information will be put and why the information is necessary for a proper purpose.] The request to inspect vital records may be granted only if the Commissioner or the Commissioner's designee agree that the requested information is necessary for a proper purpose. Inspection of any vital records or data for the collection of information for sale or release to the public, or for other speculative purposes shall not be deemed a proper purpose. The Department may impose reasonable conditions as to the use and redisclosure of information, and may limit access to the minimum necessary to fulfill the purpose for which information is requested.

(1) Requests by governmental agencies, whether foreign or domestic, for certified copies of birth and spontaneous termination of pregnancy records or for certifications of birth pursuant to section 17-169 of the Administrative Code, or for any individually identifiable information contained in the Department's vital records maintained pursuant to this Title, or for verifications thereof, shall specify the official use to which the requested information will be put.

(2) A request for a certification of birth made by the following persons must be accompanied by proof that the individual named on such certification of birth is deceased: spouse, domestic partner, parent of a child over the age of 18, child, sibling, niece, nephew, aunt, uncle, grandchild, great grandchild, grandniece, or grandnephew. Proof of death for this purpose may include, but is not limited to, certified copies of death certificates and letters testamentary.

(b) Except as provided in section 205.07 of this Code, no transcript, paper, file, report, record, or proceeding concerning a death shall be provided, except to:

(1) the spouse, domestic partner, parent, child, sibling, niece, nephew, aunt, uncle, grandparent, [or] grandchild, great grandchild, great-great grandchild, grandniece, or grandnephew of the decedent;

(2) the legal representative of the estate of the decedent, or the individual identified on a death certificate filed with the Department as the person in control of the disposition;

(3) a party with a property right who demonstrates to the Department that information beyond the fact of the death of the decedent is necessary to protect or assert a right of that party;

(4) a funeral director who requests the record or information within twelve (12) months of when the death of his or her client was registered; or

(5) persons or government agencies who otherwise establish that such records are necessary or required for a judicial or other proper purpose, or to prevent the misuse or misappropriation of City, state or federal governmental funds.

(c) Except as provided in [§] section 205.07 (a) of this Code, the Commissioner or the Commissioner's designee may grant access to unidentifiable line or cell vital records data or identifiable vital records information to qualified researchers for scientific purposes. Researchers shall submit a written request for access to such information to the Commissioner or the Commissioner's designee for review. The Commissioner or the Commissioner's designee may require such researcher to agree to conditions governing the possession and use of the data by the researcher. No person shall violate any term or condition of a written data use agreement filed with the Department upon which the Department or the Commissioner has relied to grant access to information or data.

(d) Proof satisfactory to the Department of the identity of the person making a request to inspect vital records or data such as a government issued identification record which may include a birth certificate, passport and other photographic identification, shall be provided to Department prior to inspection.

NOTE: This provision was adopted on June 5, to expand access to birth and death records for certain family members.

RESOLVED FURTHER, that the foregoing amendments to section 207.11 of the Health Code, set forth in Title 24 of the Rules of the City of New York, shall be effective January 1, 2019.