



**New York City Department of Health and Mental Hygiene
Board of Health**

**Notice of Opportunity to Comment on
the Amendment of Provisions of Article 207 of the New York City Health Code**

What are we proposing? The New York City Department of Health and Mental Hygiene (“Department” or “DOHMH”) is proposing that the Board of Health (“Board”) amend Article 207 of the Health Code to allow certain direct descendants and other family members to access the birth and death records of their deceased relatives prior to those records becoming public.

When and where is the hearing? The Department will hold a public hearing on the proposed rule. The public hearing will take place at 10 a.m. until 12:00 p.m. on April 23, 2018. The hearing will be at:

New York City Department of Health and Mental Hygiene
Gotham Center, 42-09 28th Street, Room 3-32
Long Island City, NY 11101-4132.

How do I comment on the proposed amendments to the Health Code? Anyone may comment on the proposed amendments by:

- **Website:** You may submit comments to the Department through the NYC Rules website at <http://rules.cityofnewyork.us>.
- **Email:** You may email comments to resolutioncomments@health.nyc.gov
- **Mail:** You may mail comments to:
New York City Department of Health and Mental Hygiene
Gotham Center, 42-09 28th Street, CN 31
Long Island City, NY 11101-4132
- **Fax:** You may fax comments to the Department at 347-396-6087.
- **Speaking at the hearing.** Anyone who wants to comment on the proposed amendments at the public hearing must sign up to speak. You may sign up before the hearing by calling Svetlana Burdeynik at 347-396-6078. You may also sign up in the hearing room before or during the hearing on April 23, 2018. You may speak for up to five minutes.

Is there a deadline to submit written comments? Written comments must be received on or before 5:00 pm on April 23, 2018.

What if I need assistance to participate in the hearing? You must tell the Office of General Counsel if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at 347-396-6078/6116. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by April 9, 2018

This location is wheelchair-accessible.

Can I review the comments made on the proposed amendments? You may review the comments made online at <http://rules.cityofnewyork.us/> on the proposed amendments by going to the website at <http://rules.cityofnewyork.us/>. All written comments and a summary of the oral comments received by the Department will be made available to the public within a reasonable period of time by the Department's Office of the General Counsel.

What authorizes the Department to make this amendment? Section 558(b), (c), and (g) of the Charter empowers the Board to amend the Health Code and to include in the Health Code all matters to which the Department's authority extends. Section 558(c) of the Charter authorizes the Board to include in the Health Code provisions related to maintaining a registry of births and deaths. Section 556(c)(1) of the Charter authorizes the Department to supervise and control the registration of births and deaths. Section 17-169 of the New York City Administrative Code authorizes the Department to issue certified copies of birth and death records and certifications of birth. Section 1043(a) of the Charter grants rulemaking powers to the Department.

Where can I find the Department rules and the Health Code? The Department's rules and the Health Code are located in Title 24 of the Rules of the City of New York.

What laws govern the rulemaking process? The Department must satisfy the requirements of Section 1043 of the Charter when adding or amending rules. This notice is made according to the requirements of Section 1043(b) of the Charter.

The proposed amendment of these provisions were not included in the Department's regulatory agenda for this fiscal year because it was not contemplated when the Department published the agenda.

Statement of Basis and Purpose

Introduction

Birth and death records are considered private records during a person life and for an appropriate period after death, and are protected from access by the general public because they contain individually identifiable information. However, they are also 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 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. The Department agrees that certain family members should have access to birth and death records prior to the records becoming public, and is therefore now proposing amendments to section 207.11 of the Health Code for this purpose. 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

The proposal is consistent with Administrative Code section 17-169(a), which delineates who may have access to 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.

Proposed amendments to expand vital records access to certain family members

The Department is proposing to expand the group of family members who can access birth and death records prior to their public release. The proposed group is within a close degree of consanguinity (blood relation) to the individual whose records are sought. Specifically, the Department proposes to expand 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, and to allow spouses, domestic partners, parents of a 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. As noted in the comments received related to the proposed adoption of Health Code section 207.21, this group often seeks such documents for genealogic and various official purposes. The Department proposes that allowing such access is within the meaning of “proper purpose” as used in the Administrative and Health Codes.

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 _____, to expand access to birth and death records for certain family members.

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Family Access to Birth and Death Records

REFERENCE NUMBER: DOHMH-89

RULEMAKING AGENCY: Department of Health and Mental Hygiene

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco X. Navarro
Mayor's Office of Operations

March 9, 2018
Date

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Family Access to Birth and Death Records

REFERENCE NUMBER: 2018 RG 020

RULEMAKING AGENCY: Board of Health

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: March 9, 2018