



NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The New York City Department of Health and Mental Hygiene (“the Department”) is proposing that the Board of Health (“the Board”) amend the following New York City Health Code (“Health Code”) provisions: Section 201.07 of Article 201, Section 203.07 of Article 203, Section 205.07 of Article 205, Section 207.01 of Article 207, and Section 207.13 of Article 207. These amendments to the Vital Statistics sections of the Health Code will make it easier for the Commissioner of Health to process requests requiring his or her approval, improve data quality, expedite the processing of death certificates and provide the ability to verify information using a national system.

When and where is the hearing? The Department will hold a public hearing on the proposed rules. The public hearing will take place at 10AM to 12PM on October 23, 2015. The hearing will be at:

New York City Department of Health and Mental Hygiene
Gotham Center
42-09 28th Street, 14th Floor, Room 14-31
Long Island City, NY 11101-4132

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

- **Website.** You can submit comments to the Department through the NYC Rules website at <http://rules.cityofnewyork.us>
- **Email.** You can email comments to resolutioncomments@health.nyc.gov
- **Mail.** You can 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 can 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 can sign up before the hearing by calling Svetlana Burdeynik at 347-396-6078. You can also sign up in the hearing room before or during the hearing on October 23, 2015. You can speak for up to five minutes.

Is there a deadline to submit written comments? Written comments must be received on or before October 23, 2015 at 5:00 pm.

Do you need assistance to participate in the hearing? You must tell us 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. You must tell us by October 9, 2015.

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 rule? Section 556(c)(1) of the New York City Charter ("Charter") grants the Department jurisdiction to supervise and control the registration of deaths. Section 558(b), (c), and (g) of the Charter empowers the Board of Health to amend the Health Code and to include in the Health Code all matters to which the Department's authority extends. Section 1043(a) of the Charter grants rulemaking powers to the Department. This proposed rule was not included in the Department's regulatory agenda for this fiscal year because it was not contemplated when the Department published the agenda.

Where can I find the Health Code? The Health Code is located in Title 24 of the Rules of the City of New York.

What rules 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.

Statement of Basis and Purpose

Background and New Requirements

1. Section 201.07(a) of Article 201 (Confidential medical report of birth; not subject to compelled disclosure or inspection), Section 203.07(a) of Article 203 (Confidential medical report of spontaneous termination of pregnancy and certificate of induced termination of pregnancy; not subject to compelled disclosure or inspection), Sections 205.07(a) and 205.07(c) of Article 205 (Confidential medical report of death; not subject to compelled disclosure or inspection)

The Department proposes to amend Section 201.07(a) of Article 201, Section 203.07(a) of Article 203, and Sections 205.07(a) and 205.07(c) of Article 205 of the Health Code, to authorize, in addition to the Commissioner, the Commissioner's designee to approve inspection of confidential medical reports of birth, spontaneous terminations of pregnancy (miscarriages), and death. This will ensure greater consistency among Health Code provisions requiring the approval of the Commissioner or the Commissioner's designee to grant requests to inspect these documents and make it easier to process requests requiring the Commissioner's approval.

2. Section 207.01(a) and 207.01(c) (Correction of records; application and approval; accompanying documents)

The Department proposes to amend Section 207.01(a) of Article 207 of the Health Code to allow the Department, consistent with its current ability to correct confidential medical reports of death, to correct confidential medical reports of birth and confidential medical reports of spontaneous terminations of pregnancy (miscarriages) based on new or corrected information it receives from medical facilities. Furthermore, the Department proposes to remove the reference to deaths occurring on or after January 1, 2010, to be consistent with Section 205.07(a).

The Department also proposes to amend Section 207.01(c) of Article 207 of the Health Code to allow funeral directors and undertakers to make certain corrections to death certificates using the Electronic

Death Registration System (EDRS) without first obtaining the Department's approval. This will expedite the processing of death records and burial permits. Funeral directors and undertakers will be able to correct only the name of the funeral establishment or the method, place (e.g., cemetery or crematory), location (e.g., city, state, or foreign country), or date of disposition (e.g., burial, cremation or transport out of the city). To maintain record integrity, the EDRS will not allow funeral directors and undertakers to change fields like date of birth, usual residence (e.g., state, county, city, town, or street number of residence) and Social Security number.

3. Section 207.13 (Fees for vital statistics services)

The Department proposes to amend Section 207.13 of Article 207 of the Health Code to provide specific processes for verifying information contained in birth certificates, death certificates, and certificates of spontaneous termination of pregnancy (miscarriages). The Department is proposing that, in addition to agencies of the City or State of New York, other government bodies, annuity companies, medical providers and attorneys representing estates be able to verify facts contained in the Department's records. Verifications would be provided through the National Association for Public Health Statistics and Information System (NAPHSIS) Electronic Verification of Vital Events (EVVE), and entities seeking verification must be authorized users of the system.

Statutory Authority

These amendments to the New York City Health Code ("the Health Code") are promulgated pursuant to Sections 558 and 1043 of the New York City Charter ("the Charter"). Section 558 of the Charter empowers the Board of Health ("the Board") to amend the Health Code and to include in the Health Code all matters to which the authority of the New York City Department of Health and Mental Hygiene ("the Department") extends. Section 1043 grants the Department rulemaking authority.

The proposal is as follows:

"Shall" and "must" denote mandatory requirements and may be used interchangeably in the rules of this Department, unless otherwise specified or unless the context clearly indicates otherwise.

New material is underlined.

[Deleted material is in brackets.]

RESOLVED, that subdivision (a) of Section 201.07 of Article 201 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is hereby amended, to be printed together with explanatory notes, to read as follows:

(a) The confidential medical report of birth shall be confidential and not subject to compelled disclosure or to inspection by persons other than the Commissioner or authorized personnel of the Department, except in a criminal action or criminal proceeding, or for official purposes by a federal, state, county or municipal agency charged by law with the duty of detecting or prosecuting crime. The Commissioner or the Commissioner's designee may, however, approve the inspection of such medical reports for scientific purposes.

Notes: The Department proposes to amend subdivision (a) of Section 201.07 of Article 201 to authorize the Commissioner's designee to approve the inspection of confidential medical reports of birth for scientific purposes.

RESOLVED, that subdivision (a) of Section 203.07 of Article 203 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is hereby amended, to be printed together with explanatory notes, to read as follows:

(a) The confidential medical report of a spontaneous termination of pregnancy shall be confidential and not subject to compelled disclosure or to inspection by persons other than the Commissioner or authorized personnel of the Department, except in a criminal action or criminal proceeding, or for official purposes by a federal, State, county or municipal agency charged by law with the duty of detecting or prosecuting crime. The Commissioner or the Commissioner's designee may, however, approve the inspection of such medical reports for scientific purposes.

Notes: The Department proposes to amend subdivision (a) of Section 203.07 of Article 203 to authorize the Commissioner's designee to approve the inspection, for scientific purposes, of confidential medical reports of spontaneous terminations of pregnancy.

RESOLVED, that subdivisions (a) and (c) of Section 205.07 of Article 205 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is hereby amended, to be printed together with explanatory notes, to read as follows:

(a) The confidential medical report of death shall be confidential and not subject to compelled disclosure or to inspection by persons other than the Commissioner or authorized personnel of the Department, except in a criminal action or criminal proceeding, or for official purposes by a Federal, State, county or municipal agency charged by law with the duty of detecting or prosecuting crime, or by researchers authorized and approved by the National Death Index of the National Center for Health Statistics of the federal Centers for Disease Control and Prevention, or successor agency. The Commissioner or the Commissioner's designee may, however, approve the inspection of such confidential medical reports for scientific purposes and by the spouse, domestic partner, parent, child, sibling, grandparent or grandchild of the deceased or by the individual identified on the death certificate filed with the Department as the person in control of disposition.

* * * * *

(c) Notwithstanding subsection (a), upon application of an individual licensed to practice medicine, the Commissioner or the Commissioner's designee may release a certified copy of the confidential medical report of death, or, in his or her sole discretion, provide abstracts of such information, when, and to the extent that:

(1) a need for the family medical history has been demonstrated, to the satisfaction of the Commissioner or the Commissioner's designee, in order to counsel or to diagnose and/or treat an illness or condition in an individual; and

(2) the information contained in the confidential medical report of death has been demonstrated to the satisfaction of the [commissioner] Commissioner or the Commissioner's designee, to be otherwise unavailable.

* * * * *

Notes: The Department proposes to amend subdivision (a) of Section 205.07 of Article 205 to authorize the Commissioner's designee to approve inspections of confidential medical reports for scientific purposes and by persons listed on death certificates filed with the Department. The Department also

proposes to amend subdivision (c) of Section 205.07 to authorize the Commissioner's designee to release certified copies of confidential medical reports of death to physicians.

RESOLVED, that subdivisions (a) and (c) of Section 207.01 of Article 207 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is hereby amended, to be printed together with explanatory notes, to read as follows:

(a) The Commissioner or the Commissioner's designee may approve the amendment of a birth, termination of pregnancy or death certificate, or of a confidential medical report of birth, spontaneous termination of pregnancy or death [for deaths occurring on or after January 1, 2010]. Application shall be made on a form furnished by the Department. Application for amendment of a birth certificate shall be made by the parents or surviving parent, or by the legal guardian of the person whose birth certificate is to be corrected or by the person if such person is 18 years of age or over. Application for amendment of a spontaneous termination of pregnancy certificate shall be made by the parents or surviving parent. Application for amendment of a death certificate[,] or [of a] confidential medical report of death shall be made by the person in control of disposition as defined in Article 205 of this Code or by the person identified on the death certificate as providing the personal particulars pursuant to Article 205 of this Code.

* * * * *

(c) No application shall be approved unless the Commissioner or the Commissioner's designee is satisfied that the evidence submitted shows the true facts and that an error or omission was made at the time of preparing and filing of the certificate or confidential medical report of birth, spontaneous termination of pregnancy or death, or that the name of a person named in a birth certificate has been changed pursuant to court order. However, a funeral director or undertaker who has taken control of human remains may, without approval by the Commissioner or the Commissioner's designee, use the Electronic Death Registration System to amend a certificate or confidential medical report of death if the funeral director or undertaker is amending the name of the funeral establishment or the method, place, location, or date of disposition.

Notes: The Department proposes to amend subdivision (a) of Section 207.01 of Article 207 to authorize the Department to correct confidential medical reports of birth and confidential medical reports of spontaneous terminations of pregnancy, and to remove the reference to deaths occurring on or after January 1, 2010 consistent with Health Code Section 205.07(a). The Department also proposes to amend subdivision (c) of Section 207.01 to authorize funeral directors and undertakers using the Electronic Death Registration System to make certain corrections without first obtaining Departmental approval.

RESOLVED, that subdivision (e) of Section 207.13 of Article 207 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is hereby amended, to be printed together with explanatory notes, to read as follows:

(e) The Department may [issue without charge verifications of] verify information contained on birth, spontaneous termination of pregnancy or death certificates filed with the Department when such [information is provided and a] verification is requested by an agency of the City or State of New York[. The Department may issue such verifications for a negotiated and agreed-upon fee, and in a manner it describes, to: other governmental agencies, whether] or authorized users of the National Association for Public Health Statistics and Information Systems (NAPHSIS) Electronic Verification of Vital Events (EVVE) who are foreign or domestic [;] governments, benefit-paying parties such as annuity companies and pension plans that demonstrate a need for such information to determine whether the benefits they are paying should be terminated[;], a physician licensed to practice in the

United States who demonstrates that such information is needed to determine whether a patient he or she is treating has died[;], a hospital that demonstrates that such information is needed to determine whether a patient it is treating has died[; and] or an attorney licensed to practice in the United States who demonstrates that the information is necessary to administer an estate.

Notes: The Department proposes to amend subdivision (e) of Section 207.13 of Article 207 to add certain users of the National Association for Public Health Statistics and Information Systems (NAPHSIS) Electronic Verification of Vital Events (EVVE) to the entities for which the Department may verify information contained in birth certificates, death certificates, and certificates of spontaneous termination of pregnancy.

**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: Amendment of Certain Health Code Provisions Governing Vital Statistics and Medical Records

REFERENCE NUMBER: DOHMH-59

RULEMAKING AGENCY: DOHMH

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

August 26, 2015
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: Amendment of Certain Health Code Provisions Governing Vital Statistics and Medical Records

REFERENCE NUMBER: 2015 RG 100

RULEMAKING AGENCY: Department of Health and Mental Hygiene

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

Date: August 26, 2015