



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

**Notice of Public Hearing and Opportunity to Comment
on Proposed Amendments to the New York City Health Code**

What are we proposing? The Department of Health and Mental Hygiene (the “Department”) is proposing that the Board of Health amend Articles 205 and 207 of the Health Code to clarify who may access death certificates and confidential medical reports of death and to define the circumstances under which information concerning a decedent’s fact of death may be shared.

When and where is the hearing? The Department will hold a public hearing on the proposed rule. The public hearing will take place from 10 AM until 12 PM on November 14, 2014. The hearing will be at

New York City Department of Health and Mental Hygiene
Gotham Center, 42-09 28th Street, 14th Floor, Room 14-43
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 Web site at <http://rules.cityofnewyork.us>
- **Email.** You can email written comments to resolutioncomments@health.nyc.gov
- **Mail.** You can mail written 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 written comments to the Department of 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 November 14, 2014. You can speak for up to five minutes.

Is there a deadline to submit written comments? Written comments must be received on or before 5:00 p.m. on November 14, 2014.

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 31, 2014.

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 Board of Health to make these amendments? Section 556(c) of the New York City Charter (the "Charter") grants the Department jurisdiction to supervise and control the registration of deaths. Section 558 of the Charter authorizes the Board of Health to adopt and amend the Health Code and to include in the Health Code all matters to which the authority of the Department extends. Section 558(c) of the Charter also empowers the Board of Health to provide for the examination and issuance of death certificates. Section 1043(a) of the Charter grants rule-making powers to the Department.

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

What rules govern the rulemaking process? The Board of Health must meet the requirements of §1043 of the City Charter when creating or changing the Health Code. This notice is made according to the requirements of City Charter §1043.

Statement of Basis and Purpose

These amendments to the New York City Health Code (the Health Code) are promulgated pursuant to sections 556, 558, and 1043 of the New York City Charter (the Charter). Section 556 of the Charter grants the Department jurisdiction to supervise and control the registration of deaths. Sections 558(b) and 558(c) of the Charter empower 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 558(c) of the Charter also empowers the Board of Health to provide for the examination and issuance of death certificates. Section 1043 grants the Department rule-making authority.

The proposed amendments to sections 205.7, 207.11, and 207.13 of Articles 205 and 207 of the Health Code are intended to: (1) expand access to confidential medical reports of death for deaths that occurred prior to January 1, 2010; (2) clarify who may obtain a copy of a death certificate; and (3) and expand access to fact-of-death information for specified benefit-paying parties, licensed doctors and attorneys, upon payment of a fee.

The proposed amendments amend Health Code section 205.07(a) to add siblings, grandparents, and grandchildren to the list of people who may access confidential medical reports of death. Currently, section 205.07(a) allows the Department to release confidential medical reports of death for deaths occurring on or after January 1, 2010. Because there is no reason to treat reports of deaths occurring earlier differently, the proposed amendments also delete the reference to that date and would allow the Department to release any available confidential medical report of death to an entitled person.

Health Code section 207.11 currently allows "persons or their representatives, who are agents of, or who otherwise have a legal or fiduciary obligation to such persons, as a relative, person in

control of disposition, heir or beneficiary...” to inspect death records. The current language has led to confusion about who is entitled to a decedent’s death record. Therefore, the Department proposes to clarify the classes of people entitled to inspect a confidential medical report of death, and align that list with the proposed amendments to section 205.07.

Finally, Health Code section 207.13(e) allows the Department to issue verifications of information contained in death certificates and other vital statistics certificates to other governmental agencies upon request. The proposed amendments will expand access to benefit-paying parties such as annuity companies and pension plans to terminate benefits upon death of a recipient, physicians who demonstrate that such information is needed to determine whether a patient he or she is treating has died, and licensed attorneys who demonstrate that the information is necessary to administer an estate.

The resolution 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 text is underlined; deleted material is in [brackets].

RESOLVED, that subdivision (a) 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 amended, to be printed with explanatory notes to read as follows:

§205.07 Confidential medical report of death; not subject to compelled disclosure or inspection.

(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 may, however, approve the inspection of such confidential medical reports for scientific purposes and[, for confidential medical reports of deaths occurring on or after January 1, 2010,] by the spouse, domestic partner, parent, [or] 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.

Notes: Subdivisions (a) of §205.07 was amended by Board of Health resolution adopted XXX to allow siblings, grandparents, and grandchildren to inspect confidential medical reports of death, and to allow thee Department to release confidential medical reports of death to entitled parties for all deaths on record and not just for deaths occurring on or after January 1, 2010.

RESOLVED, that subdivisions (a) and (b) of Section 207.11 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, are amended, to be printed with explanatory notes to read as follows:

§207.11 Inspection of vital records or data; transcripts.

(a) Except as provided in §§201.07, 203.07 and 205.07, 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 §3.25 of this Code and §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 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 [commercial or] 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.

(b) [No] Except as provided in section 205.07, no transcript, paper, file, report, record, or proceeding concerning a death shall [, however, be open to inspection or copies thereof provided, except upon request, to persons or to their representatives, who are agents of, or who otherwise have a legal or fiduciary obligation to such persons; or who have a personal interest, as a relative, person in control of disposition, heir or beneficiary, of a deceased person to whom the records pertain; or who have a vested right in property by reason of the death of the person to whom the records pertain; or who have a vested right in property by reason of the death of the person to whom the records pertain; or] be provided, except to:

- (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.

Notes: Subdivisions (a) and (b) of §207.11 were amended by Board of Health resolution adopted XXX to clarify that subject to the Commissioner's discretion information contained in death related reports intended for commercial purposes may be considered a proper purpose; clarify who may access or obtain copies of reports of death; and provide that funeral directors may obtain death certificates and confidential medical reports of death for a period not to exceed 12 months after the date of the death registration.

RESOLVED, that subdivision (e), the opening paragraph of subdivision (f) and subdivision (g) 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, are amended, to be printed with explanatory notes to read as follows:

§207.13 Fees for vital statistics services.

* * *

(e) The Department may issue without charge verifications of 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 to other governmental agencies, whether foreign or domestic; to 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, and an attorney licensed to practice in the United States who demonstrates that the information is necessary to administer an estate.

(f) The Department shall[, effective January 1, 2010,] charge an application fee of \$40.00 to correct or amend birth or death certificates as follows:

* * *

(g) The Department shall[, effective January 1, 2010,] charge a fee of \$40.00 for disposition permits issued pursuant to Article 205, except those for burials in the City cemetery.

Notes: Subdivision (e) of §207.13 of Article 207 was amended by Board of Health resolution adopted XXX to allow verifications of death information to be released, upon payment of a fee, to benefit-paying parties in order to terminate benefits, licensed physicians who demonstrate that such information is needed to determine whether a patient has died, and licensed attorneys who demonstrate that the information is necessary to administer an estate. In addition, the Board removed the reference to the effective date of January 1, 2010 in §207.13(f) and (g).

**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 Governing Birth, Death and Other Records

REFERENCE NUMBER: DOHMH-45

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/ Amy Bishop
Mayor's Office of Operations

October 2, 2014
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 Rules Governing Birth, Death and Other Records

REFERENCE NUMBER: 2014 RG 069

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
Acting Corporation Counsel

Date: October 1, 2014