



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

**Notice of Public Hearing and Opportunity to Comment on
Proposed Amendments**

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 Section 207.05 of Article 207 the New York City Health Code to eliminate the requirement that a person requesting a change to the sex designation on a birth certificate present proof from a health professional, and instead require self-attestation. Additionally, the Department is proposing that the Board approve “X” as an additional sex designation option that is not exclusively female or male for birth certificate sex change requests.

When and where is the hearing? The Department will hold a public hearing on the proposal at 10 a.m. on July 24, 2018. The hearing will be held at:

New York City Department of Health and Mental Hygiene
Gotham Center
42-09 28th Street, 3rd Floor, Room 3-32
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 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 New York City Department of Health and Mental Hygiene 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 July 24, 2018. 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 July 24, 2018.

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. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by July 10, 2018.

This location is wheelchair-accessible.

Can I review the comments made on the proposed amendment? 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 17-167.1 of the New York City Administrative Code authorizes the Department to correct sex designations on birth records. Section 1043(a) of the Charter grants rulemaking powers to the Department.

Where can I find the Department's rules? 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 of Proposed Rule

Background

In 1971, the Board of Health amended section 207.05 of the New York City Health Code to allow the Department to file a new birth certificate with a corrected gender marker of male or female for a person who both obtained a court order changing his or her name and who underwent “convertive” surgery. The Department had, generally but not exclusively, interpreted the requirement for convertive surgery to mean genital surgery. As a result, transgender applicants requesting new birth certificates were required to submit medical records demonstrating that they had undergone genital surgery to change sex and the number of requests for a corrected birth certificate was relatively small. For example, in 2012, the number of new birth certificates approved and issued to transgender applicants was 20 and, in 2013, only 22 new birth certificates were issued.

In 2014, the Board of Health amended Section 207.05(a)(5) to eliminate the requirement for convertive surgery. This amendment allowed the Department to issue a new birth certificate with a changed gender marker of male or female based on an affirmation from a physician licensed to practice in the United States, or an affidavit from a doctoral-level psychologist, clinical social worker, physician assistant, nurse practitioner, marriage and family therapist, mental health counselor, or midwife, licensed to practice in the United States. Eliminating the surgery requirement led to a dramatic increase in requests for new birth certificates; from January 2015, when the amendment became effective, through February 2018, the Department issued 1,047 new birth certificates to transgender applicants.

Proposed Amendment

The Department is now proposing to eliminate the requirement that a person requesting a change to the sex designation on a birth certificate present proof from a health professional. Instead, applicants would be able to self-attest as to their gender. Additionally, the Department is proposing that the Board approve “X” as an additional sex designation for persons who do not identify as exclusively female or male.

The Department, in discussion with other states and advocates, has found that having practitioners affirm or attest to a person applicant’s gender identity is both a potential barrier for persons without access to a practitioner and does not add sufficient value in the process of deciding whether a new birth certificate should be issued. Anecdotal evidence suggests that practitioners simply comply with their patients’ requests when asked to affirm or attest to a patient’s request for a change of gender. Consequently, the Department proposes to rely on the applicant’s attestation that would require notarization.

The Department is also proposing that the Board approve “X” as an additional sex designation option that is not exclusively female or male for birth certificate sex change requests. The sex designation on the US Standard Certificate of Live Birth is completed by the hospital or attendant at the time of birth. The four choices are male, female, unknown and undetermined. These are “sex” categories and not gender categories. The original public health data reported by the hospital is not changed under this proposal.

“Gender” categories are only applied on the birth certificate during an amendment process. When the gender on a birth certificate is amended the original record is placed under seal and a new record is created. There is no indication on the record of the amendment history. The Department is proposing to allow “X” for those applicants who want a designation other than female or male on their birth certificate.

The amendment is as follows:

New material is underlined.

[Deleted material is in brackets.]

“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.

RESOLVED, that subparagraph (i) of paragraph (5) of subdivision (a) of section 207.05 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 read as follows:

(i)(A) A person [files either an affirmation from a physician (MD or DO) licensed to practice medicine in the United States and who is in good standing, to affirm that in keeping with contemporary expert standards regarding gender identity, the applicant's requested correction of sex designation of male or female more accurately reflects the applicant's sex or gender identity] who is at least 18 years old and named as the registrant on a birth record provides a notarized statement requesting that the sex designation on such birth record be changed to female, male, or X, to conform to the person's gender identity, where X signifies a sex designation that is not exclusively female nor exclusively male; or

(B) [an affidavit from a doctoral level psychologist (PhD or PsyD) in clinical or counseling psychology, master social worker, clinical social worker, physician assistant, nurse practitioner, marriage and family therapist, mental health counselor, or midwife, licensed to practice in the United States and who is in good standing to attest that in keeping with contemporary expert standards regarding gender identity, the applicant's requested correction of sex designation of male or female more accurately reflects the applicant's sex or gender identity] The living parents named on the birth certificate of a registrant who is less than 18 years old or the legal guardians of such registrant provide a notarized statement or statements requesting that the sex designation on such birth record be changed to female, male, or X, where X signifies a sex designation that is not exclusively female nor exclusively male.

**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 Rules Governing Birth Certificate Changes

REFERENCE NUMBER: DOHMH-93

RULEMAKING AGENCY: Board of Health

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/ ALEXANDRA OZOLS
Mayor's Office of Operations

May 31, 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: Amendment of Rules Governing Birth Certificate Changes

REFERENCE NUMBER: 2018 RG 066

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: May 31, 2018