



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

**Notice of Public Hearing and Opportunity to Comment on
Proposed Amendment to Articles 203 and 205 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 New York City Board of Health (“Board”) amend Articles 203 and 205 of the New York City Health Code (“Health Code”) to modify the provisions regarding disposition of conceptus requirements and to allow certifications of termination of pregnancy to be completed by designees of reporting parties.

When and where is the hearing? The Department will hold a public hearing on the proposed rules. The public hearing will take place from 1 p.m. to 3 p.m. on Thursday, August 15, 2024. The hearing will be conducted by video conference accessible via internet or telephone.

- **Internet.** To participate in the public hearing, please register at this Webex URL: <https://nycdohmh.webex.com/nycdohmh/j.php?MTID=ma77d2ccc3e14df75de9c45179f8af83c>
If prompted to provide an event number or password, please enter the following:
Event number: **2348 104 3062**; Access code: **234 810 43062**
Password: Health (**432584** from phones and video systems)
- **Phone:** For access, dial: (646) 992-2010 or (408) 418-9388, then please enter the following:
Access code: **234 810 43062**; Password: Health (**432584** from phones and video systems)

How do I comment on the proposed amendments? Anyone can 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
Office of the General Counsel
Gotham Center, 42-09 28th Street, CN 31
Long Island City, NY 11101-4132
- **Fax.** You may fax comments to Department at 347-396-6087.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling Svetlana Burdeynik at 347-396-6078 or by emailing at resolutioncomments@health.nyc.gov before the hearing begins at 1 p.m. on August 15, 2024. While you will be given the opportunity during the hearing to indicate that you would like to comment, we prefer that you sign-up in advance. You can speak for up to three minutes. Please note that the hearing is for accepting oral testimony only and is not held in a “Question and Answer” format.

Is there a deadline to submit comments? Written comments must be received at or before 5:00 p.m. on August 15, 2024.

What if I need assistance to participate in the hearing? You must tell the Office of Legal Affairs 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 August 1st, 2024.

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 Board to make this amendment? Section 558(b) and (c) of the Charter empower 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 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 amendments were not included in the Department's regulatory agenda for this fiscal year because it did not contemplate this amendment at the time the regulatory agenda was published.

Statement of Basis and Purpose of Proposed Rule

The Department is proposing to amend the Health Code Articles 203 and 205 to eliminate the requirement that any conceptus that has completed 24 or more weeks of gestation be disposed of as human remains. Disposition as human remains would remain available upon request by those who desire burial or cremation and a process for this is included in the amendments as well. Also included in the proposed amendments is a provision to allow certification of induced terminations of pregnancy by designees and changes to terminology to make the rules gender neutral.

The proposed 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 section 203.03 of Article 203 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:

§ 203.03 Reporting Terminations of Pregnancy.

(a) When a termination of pregnancy occurs in the City it shall be reported as follows:

- (1) If [the event occurs] in a hospital or en route thereto, by the person in charge of such hospital or his or her designee; or
- (2) If [the event occurs] elsewhere than in a hospital or en route thereto, by the licensed health care practitioner in attendance at or after such event or by their designee; or
- (3) If a licensed health care practitioner attends at or after [the event] a termination of pregnancy elsewhere than in a hospital or en route thereto as an associate of a hospital, by the person in charge of the hospital with which the licensed health care practitioner is associated or by the designee of such person in charge; or
- (4) If [the event is] investigated by the office of chief medical examiner, by a medical examiner within that office; or
- (5) If [the event is] a medication-induced termination of pregnancy, by the licensed health care practitioner prescribing or ordering the medication or by their designee.

[. . .]

- (d) In circumstances where the issuance of a disposition permit pursuant to 24 RCNY Health Code Article 205 is [required or] requested and a person required to report a termination of pregnancy pursuant to subdivision (a) of this section [does] has not [file] filed a report thereof electronically, the requirement of filing a certificate and confidential medical report, if any, required by this section may be fulfilled by delivery of the same immediately upon demand and within the time prescribed by subdivision (c) of this section to a funeral director or undertaker authorized to take charge of the conceptus or to the person in charge of the City mortuary if the remains are to be buried in the City cemetery. Such funeral director, undertaker or person in charge of the City mortuary, or an agent of such funeral director or undertaker registered with the Department pursuant to 24 RCNY Health Code Article 205 or a designee of the person in charge of the mortuary, shall then file the certificate within 48 hours following the receipt of the certificate of termination of pregnancy. Funeral directors, undertakers, City mortuary personnel, and their agents or designees, shall not divulge information in the confidential documents except to authorized personnel of the Department.

[. . .]

RESOLVED, that subdivision (a) of section 203.05 of Article 203 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:

§ 203.05 Preparation and Certification of Certificates.

- (a) (1) *Preparation.* Any certificate or confidential medical report required by this Article shall be prepared by the same person required to file the same pursuant to 24 RCNY Health Code § 203.03 but when a termination of pregnancy occurs in a hospital or en route thereto, the certificate and confidential medical report, if any, shall be prepared by a licensed health care practitioner in attendance, assisting or present at or after the event, by the chief medical officer of the hospital, by the physician in charge of the service on which the [woman] pregnant person was treated, or by a designee of the person in charge of the hospital who is trained or approved by the Department. When a licensed health care practitioner attends at or after a termination of pregnancy elsewhere than in a hospital or en route thereto, he or she, or a designee of such person who is trained or approved by the Department, shall prepare the required certificate and confidential medical report, if any.

(2) *Certification.* A certificate of spontaneous termination of pregnancy and the confidential medical report shall be certified by a physician in attendance or assisting at or after the event, by the chief medical officer of the hospital where the event occurred, or by the physician in charge of the service on which the [woman] pregnant person was treated, or by a designee of such person who is trained or approved by the Department. A certificate of induced termination of pregnancy shall be certified by a licensed health care practitioner, who is licensed-or authorized pursuant to the State Education Law or other applicable law to perform such a termination of pregnancy, in attendance or assisting at or after the event, by the chief medical officer of the hospital where the event occurred, or by the physician in charge of the service on which the [woman] pregnant person was treated, or by a designee of such person who is trained or approved by the Department. When a termination of pregnancy certificate is filed by the office of chief medical examiner, the certificate shall be certified by a medical examiner within that office. A person certifying a certificate and confidential medical report, if any, shall examine said documents for correctness of the information contained thereon and make necessary changes.

RESOLVED, that section 203.09 of Article 203 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:

§ 203.09 Disposal of Conceptus.

[Every] Upon request a conceptus [that has completed 24 or more weeks of gestation shall] may be disposed of in a manner provided for human remains generally and in accordance with a disposition permit issued pursuant to 24 RCNY Health Code Article 205. [When, however, a conceptus has not completed 24 weeks of gestation, it may be disposed of in accordance with a disposition permit issued pursuant to 24 RCNY Health Code Article 205, upon request.]

RESOLVED, that section 205.01 of Article 205 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:

§ 205.01 Definitions.

When used in this title:

- (a) "Burial" means interment of human remains in the ground or in a tomb, vault, crypt, cell or mausoleum, and includes any other [usual] means of final disposal of human remains other than cremation.
- (b) "Cremation" means the burning of human remains in a crematory.
- (c) "Human remains" or "remains" means [a conceptus which has completed 24 weeks or more of gestation or] all or any part of the dead body of a human being but does not include human ashes recovered after cremation. For purposes of this Article a conceptus of [less than 24 weeks gestation] any gestational age for which the issuance of a disposition permit pursuant to 24 RCNY Health Code § 205.21 has been requested shall be treated as human remains.

[. . .]

RESOLVED, that section 205.13 of Article 205 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:

§ 205.13 Disposal of Human Remains; Time Limit.

- (a) Except as set forth in subdivision (b) of this section, remains of persons dying in the City, or remains resulting from a termination of pregnancy occurring in the City for which the issuance of a disposition permit pursuant to 24 RCNY Health Code § 205.21 has been requested, shall be buried, cremated or transported out of the City within four days following death or termination of pregnancy. Such remains may, however, within the four-day period, be placed in the general reception vault of a cemetery for a period not exceeding ten days from the placement therein. The Department may extend the time limitations contained in this subdivision and may, in granting an extension, specify conditions to be observed to prevent seepage or escape of offensive odors.
- (b) Human remains may be temporarily held for more than the time periods specified in subdivision (a) of this section without being buried, cremated or transported out of the City only if an appropriate interim disposition permit has been issued pursuant to 24 RCNY Health Code § 205.21.

RESOLVED, that section 205.15 of Article 205 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:

§ 205.15 Delivery of Remains to Funeral Director or Undertaker; Unclaimed Remains.

When a death or a termination of pregnancy for which the issuance of a disposition permit pursuant to 24 RCNY Health Code § 205.21 has been requested occurs in a hospital, hospice or other health care facility, the person in charge shall deliver the remains immediately upon demand and within the time for filing reports prescribed in 24 RCNY Health Code §§ 203.03(c) and 205.03(b) to a funeral director or undertaker who presents a certification that he or she has been authorized to take charge of the remains by the person in control of disposition as defined in 24 RCNY Health Code § 205.01. If the human remains are not claimed within 24 hours following death or termination of pregnancy, the person in charge of the hospital, hospice or other health care facility shall immediately notify the person in charge of the City mortuary. If, however, an autopsy is to be performed on unclaimed remains pursuant to § 4214(1) of the Public Health Law, the person in charge of the hospital, hospice or other health care facility shall notify the person in charge of the City mortuary within 48 hours of death and prior to the autopsy. Under such circumstances the filing of the certificate of death and confidential medical report may be postponed until 72 hours after death. The requirement of filing may be fulfilled by delivery of the certificate and confidential medical report to the person in charge of the City mortuary when the remains are removed from the hospital or other health care facility.

RESOLVED, that section 205.21 of Article 205 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:

§ 205.21 Burial, Cremation, Holding and Transportation of Human Remains; Disposition Permit.

- (a) When a death or termination of pregnancy occurs in the City, the human remains shall not be buried, cremated, temporarily held as an interim disposition pursuant to [subdivision (b) of] 24 RCNY Health Code § 205.13(b) or transported out of the City unless an appropriate disposition permit has been issued by the Department. However, remains may be transported out of the city to a contiguous county in the State without obtaining prior authorization to transport from the Department. In such cases, an appropriate disposition permit must still be issued by the Department prior to burial, cremation, interim disposition or transportation to any other area. Such burial, cremation, interim disposition or transportation permit shall not be issued until a certificate of death or termination of

pregnancy and, if required, a confidential medical report have been filed with the Department. A permit to bury, temporarily hold or cremate human remains or to transport them out of the City includes authorization to remove the remains from the place of death or termination of pregnancy pursuant to 24 RCNY Health Code § 205.19(a). If remains are to be transported out of the City by common carrier, they shall be prepared in such manner as to comply with the State Sanitary Code.

(b) [. . .]

(3) The person to whom an interim disposition permit has been issued in accordance with [subdivision (b) of] 24 RCNY Health Code § 205.13(b) shall maintain a permanent record of each of the human remains being temporarily held which shall include the permit number[,] and shall maintain the original interim disposition permit until such time it is surrendered to the Department in exchange for a final burial, cremation or transportation permit.

[. . .]

**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 Relating to Induced Termination of Pregnancy and Disposal of Fetal Remains (Health Code Articles 203 and 205)

REFERENCE NUMBER: 2024 RG 062

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
Senior Counsel

Date: June 17, 2024

**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 Relating to Induced Termination of Pregnancy and Disposal of Fetal Remains

REFERENCE NUMBER: DOHMH-146

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 a violation poses a risk to public health and safety.

/s/ Fiona Peach
Mayor’s Office of Operations

June 18, 2024
Date