



## **Department of Health and Mental Hygiene**

### **Board of Health**

#### **Notice of Adoption of Amendments to Article 207 of the New York City Health Code**

In compliance with §1043(b) of the New York City Charter (the “Charter”) and pursuant to the authority granted to the Board of Health by §558 of said Charter, a notice of intention to amend Article 207 of the New York City Health Code (the “Health Code”) was published in the City Record on October 14, 2014 and a public hearing was held on November 17, 2014. Thirteen people testified and nine written comments were received, including some from those who testified. In response to the comments, changes were made to the resolution to clarify its language and include a licensed master social worker among the list of professionals that may affirm as to an applicant’s sex or gender identity. At its meeting on December 9, 2014, the Board of Health adopted the following resolution.

#### **Statement of Basis and Purpose**

##### ***Statutory Authority***

These amendments to the New York City Health Code (the Health Code) are promulgated pursuant to §§558 and 1043 of the New York City Charter (the Charter). Sections 558(b) and (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 1043 grants the Department rule-making authority.

##### ***Background***

In 1971, the Board of Health amended New York City Health Code Section 207.05 of Article 207 to allow the Department to file a new birth certificate for a person who had legally changed his or her name and who had undergone “convertive” surgery. The Department has interpreted the requirement for convertive surgery in paragraph (a)(5) of Section 207.05 to mean genital surgery. As a result, the Department has required transgender applicants who desire a new birth certificate with corrected gender to submit a surgical operative record including the date of the operation; a post-operative examination report signed by a physician attesting to the applicant’s surgical change of sex; and a post-operative psychiatric evaluation signed by a psychiatrist or clinical psychologist. Until December 2006, the Department issued new birth certificates listing the applicant’s new name, but omitting reference to any gender, to anyone who submitted acceptable documentation. Since December 2006, when the Board of Health approved a change to the birth certificate form, the Department has provided new birth certificates that list not only an applicant’s new name but also the corrected sex designation. Applicants are still required, however, to obtain a court ordered name change and undergo convertive surgery.

This amendment eliminates the requirement that an individual must obtain a court ordered name change and undergo convertive surgery.

Other jurisdictions similarly have amended their laws to allow transgender people to obtain new birth certificates with corrected sex on birth certificates without having to undergo surgery.<sup>1</sup> In May 2014, New York State Department of Health changed its procedures for correcting gender on birth certificates in the rest of the state (outside of New York City). For people born in New York outside of New York City, the State Department of Health will now issue a new certificate to an applicant who submits a notarized affidavit from a physician, nurse practitioner or physician assistant licensed in the United States that either states that the applicant has undergone appropriate clinical treatment for a person diagnosed with gender dysphoria or transsexualism, or confirms that surgical procedures have been performed on the applicant to complete sex reassignment.

At the federal level, the U.S. Department of State in June 2010 announced a change in policy allowing the gender designation on passports to be changed for applicants producing certifications from attending internists, endocrinologists, gynecologists, urologists or psychiatrists stating that the provider has a doctor/patient relationship with the applicant and that the applicant has undergone appropriate clinical treatment for gender transition. Likewise, as of September 2013, the Social Security Administration no longer requires proof of surgery in order to change the gender on Social Security (SSN) records. The Social Security Administration now authorizes medical certifications of appropriate clinical treatment for gender transition from a licensed physician or doctor of osteopathy.

This trend reflects an understanding of the diverse expression of transgender identity, and that not all transgendered persons want surgery in order to express their gender identity.<sup>2</sup> Indeed, in June 2014 the American Medical Association expressed its support for eliminating any requirement that an individual undergo surgery in order to change the sex indicated on a birth certificate.

The Board is amending Section 207.05 to authorize the Department to issue an applicant a new birth certificate with a changed gender marker without requiring such applicant to have undergone convertive surgery. An affirmation from a physician licensed to practice in the United States, or an affidavit from a doctoral-level psychologist, 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, is required in order to ensure the integrity of birth records when gender has been amended. The Department recognizes it is critically important for individuals to have birth records that accurately reflect their gender for many purposes including obtaining access appropriate to care and facilities. The rationale is as follows: (1) birth certificates are foundational documents upon which all other official documents are based, including United States passports, driver licenses, and Social Security cards, are proof of United States citizenship, and should only be amended upon presentation and acceptance of the required documentation; (2) physicians and doctoral-level psychologists, along with master social workers, clinical social workers, physician assistants, nurse practitioners, marriage and family therapists, mental health counselors, and midwives are licensed by issuing authorities in the United States, their credentials can be evaluated and validated, and they can be subject to professional sanctions, penalties and prosecution for providing false information; and (3) New York City, as an independent vital records jurisdiction, along with New York State and the other 55 vital records jurisdictions, works in close partnership with the federal government,

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<sup>1</sup> See, e.g., California (Cal. Health & Safety §103425), Iowa (Iowa Code §144.23(3)), and Vermont (Vt. Stat. §5112).

<sup>2</sup> See World Professional Association for Transgender Health (WPATH), “Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People”, 7<sup>th</sup> Version (2012) at [www.wpath.org](http://www.wpath.org).

and federal government agencies must rely on the integrity of birth records to accurately represent the facts of birth. Without birth record integrity, passports, driver licenses and other core identity documents would be questionable. The integrity of the birth records will be maintained with this change while making it easier for transgender individuals to obtain birth records that accurately reflect their gender.

Section 207.05 is also being amended to eliminate the requirement that applicants for new birth certificates with corrected gender also change their names. The Department recognizes that some applicants may want to change their name on their birth certificate, and such applicants would still need to show that the new name was legally changed by a court order. Some people transitioning from one gender to another, however, may want to continue using the same name. These applicants should not be required to go to court and legally change their names in order to obtain new birth certificates.

Finally, the Board is amending Section 207.13 regarding fees to simply reflect the removal of the “convertive surgery” requirement and replace it with the language consistent with the changes to Section 207.05.

The resolution is as follows.

Shall and must denote mandatory requirements and may be used interchangeably.

New text is underlined; deleted material is in [brackets].

**RESOLVED**, that paragraph 5 of subdivision (a) of Section 207.05 of the New York City Health Code, as set forth in Title 24 of the Official Compilation of the Rules of New York City, is hereby amended, to be printed together with explanatory notes, to read as follows:

(5) [The name of the person has been changed pursuant to court order and proof satisfactory to the Department has been submitted that such person has undergone convertive surgery.] (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;  
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.

(ii) If the request for a new birth certificate includes a name change, the person must also submit proof that his or her name has been changed pursuant to a court order.

Notes: By resolution adopted on December 9, 2014, the Board of Health amended Subdivision 207.05(a)(5) of Article 207 to authorize persons born in New York City to obtain a new birth certificate reflecting a change in gender marker as affirmed by a physician (MD or DO) licensed in the United States. Also acceptable is an attestation 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 in the United States.

**RESOLVED**, that paragraph (7) of subdivision (f) of Section 207.13 of the New York City Health Code, set forth in Title 24 of the Official Compilation of the Rules of New York City, is hereby amended, to be printed together with explanatory notes, to read as follows:

(7) Amending a birth certificate for a person [who has undergone convertive surgery] to correct the gender marker on their birth certificate.

Notes: By resolution adopted on December 9, 2014, the Board of Health amended Subdivision 207.13(f)(7) of Article 207 to replace “who has undergone convertive surgery” with “correct the gender marker on their birth certificate.”