

DEPARTMENT OF HEALTH AND MENTAL HYGIENE
BOARD OF HEALTH
NOTICE OF INTENTION TO AMEND ARTICLE 201
OF THE NEW YORK CITY HEALTH CODE
NOTICE OF PUBLIC HEARING

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 the Charter, notice is hereby given of the proposed amendment of Article 201 of the New York City Health Code (the “Health Code”).

NOTICE IS HEREBY GIVEN THAT THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE WILL HOLD A PUBLIC HEARING ON THE PROPOSAL ON THURSDAY, APRIL 30, 2009 FROM 10 A.M. TO 12 P.M. IN THE THIRD FLOOR BOARDROOM (ROOM 330) AT 125 WORTH STREET, NEW YORK, NEW YORK 10013.

PERSONS INTERESTED IN PRE-REGISTERING TO SPEAK SHOULD NOTIFY, IN WRITING, RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, 125 WORTH STREET CN-31, NEW YORK, NEW YORK; (212) 788-5010 BY WEDNESDAY, APRIL 29, 2009. PLEASE INCLUDE A TELEPHONE NUMBER WHERE, IF NECESSARY, YOU MAY BE REACHED DURING NORMAL WORKING HOURS. SPEAKERS WILL BE LIMITED TO FIVE (5) MINUTES.

PERSONS WHO REQUEST THAT A SIGN LANGUAGE INTERPRETER OR OTHER FORM OF REASONABLE ACCOMMODATION FOR A DISABILITY BE PROVIDED AT THE HEARING ARE ASKED TO NOTIFY RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, 125 WORTH STREET CN-31, NEW YORK, NEW YORK 10013; (212) 788-5010 BY THURSDAY, APRIL 16, 2009.

REGISTRATION WILL BE ACCEPTED AT THE DOOR UNTIL 10A.M. ON THE DATE OF THE HEARING. HOWEVER, PREFERENCE WILL BE GIVEN TO THOSE WHO PREREGISTER.

WRITTEN COMMENTS REGARDING THE PROPOSAL ADDRESSED TO THE ATTENTION OF THE BOARD OF HEALTH MUST BE SUBMITTED TO RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, BY MAIL TO 125 WORTH STREET CN-31, NEW YORK, NEW YORK 10013, BY FAX TO (212) 788-4315, OR BY E-MAIL TO RESOLUTIONCOMMENTS@HEALTH.NYC.GOV ON OR BEFORE 5 P.M. ON THURSDAY, APRIL 30, 2009. THE DEPARTMENT’S GENERAL POLICY IS TO MAKE WRITTEN COMMENTS AVAILABLE FOR PUBLIC VIEWING ON THE INTERNET. ALL COMMENTS RECEIVED, INCLUDING ANY PERSONAL INFORMATION PROVIDED, WILL BE POSTED WITHOUT CHANGE TO <http://www.nyc.gov/html/doh/html/comment/comment.shtml>.

WRITTEN COMMENTS RECEIVED BY THE SECRETARY TO THE BOARD OF HEALTH AND A TRANSCRIPT OF THE PUBLIC HEARING WILL BE AVAILABLE FOR PUBLIC INSPECTION WITHIN A REASONABLE TIME AFTER RECEIPT, BETWEEN THE HOURS OF 9:00 A.M. AND 5:00 P.M. AT THE OFFICE OF THE SECRETARY.

STATUTORY AUTHORITY

These amendments to the New York City Health Code (“Health Code”) are promulgated pursuant to Sections 556, 558 and 1043 of the New York City Charter (the “Charter”). Section 556 of the Charter provides the Department of Health and Mental Hygiene (“Department” or “DOHMH”) with jurisdiction to regulate all matters affecting health in the City of New York, including the authority to supervise and control the registration of births. Section 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 Department’s authority extends. Section 1043 of the Charter grants the Department rulemaking powers.

STATEMENT OF BASIS AND PURPOSE

INTRODUCTION

As part of a comprehensive review of the Health Code, the Department proposes that current Article 201, Births, be amended to assure that the revised provisions provide adequate legal tools to effectively address general public health matters and to reflect modern public health thinking and practice.

Pursuant to this review and assessment of the Health Code, the DOHMH proposes that the Board amend Article 201, effective January 1, 2010, as set forth below.

Section 201.01

The definition of the term “person in charge of a hospital” has been amended to include the title of chief executive officer as an example of a person in charge of a hospital. Such amendment provides additional guidance on which individuals the DOHMH will consider a person in charge.

A new subdivision (c) has been added to define the term “hospital” in a manner consistent with Article 28 of the State Public Health Law to include not only in-patient hospitals, but also, for example, diagnostic and treatment centers.

Section 201.03

Subdivision (a) has been amended to delete reference to a hospital’s ambulance service as the only forum for a birth en route to a hospital, and to add the broader concept of a birth occurring en route to the hospital. This subdivision was also amended to permit the designee of a person in charge of a hospital to report a live birth to the DOHMH. This will enable the hospital to delegate the task of filing the report to a lower level employee. Reference to a “maternity clinic” has been deleted as such facilities are subsumed within the term “hospital” as now defined.

Subdivision (a) has also been amended to permit a licensed midwife and a registered physician assistant, in addition to a physician, in attendance at a birth outside a hospital to report such birth. Permitting such licensed health care professionals to report the birth reflects the practice of having medical personnel other than physicians participate in live births. In addition, permitting reporting by such licensed health care

professionals in attendance at the live birth other than a physician does not affect medical care standards; rather, it facilitates reporting requirements.

Subdivision (b) was amended to correct legal nomenclature distinguishing between a “subsection” and a “paragraph”.

Subdivision (c) has been added to require reporters to provide additional required information upon receipt of new information by the reporter. The new subdivision provides for submission of such information within five business days of receipt by the reporter.

Subdivision (d) has been added to require reporters to provide, within five business days of a request by the Department, additional information necessary to complete, clarify or verify the information required to be reported.

Section 201.05

Subdivision (a) has been amended to permit a licensed midwife or registered physician assistant, in addition to a physician, certified nurse practitioner or a registered professional nurse, to prepare a birth certificate and a confidential medical report of birth, and to further specify that such documents must be certified. This subdivision now permits individuals other than the licensed health care professionals who attended or assisted, or who were present at or after the birth to prepare and certify the certificates and confidential medical reports, relying on their review of medical records. This change recognizes current practice in hospitals, especially in the context of electronic filing. However, the amendment requires that such individuals be designated by the person in charge of the hospital and that they be trained or approved by the Department. If a birth occurs elsewhere than in a hospital or en route thereto, and is attended by a physician, licensed midwife, certified nurse practitioner or a registered physician assistant, then only they can prepare and certify the documents. Furthermore, this subdivision was amended to make clear that the act of certifying involves an examination of the record being certified for correctness of the information.

Subdivision (b) has been amended to reflect gender neutrality and to correct a reference to a particular section of the State Public Health Law. In order to control the quality of data collection, a provision has been added to require that DOHMH approved worksheets be used in a hospital, and that individuals using them, other than the specified licensed professionals, be trained or approved by the Department. Such worksheets must be retained by the hospital for three years, and must be made available for inspection by the Department upon request.

Subdivision (c) and subdivision (f) (now renumbered as subdivision (d)) have been amended to remove now unnecessary language concerning requirements that were effective January 1997. Renumbered subdivision (d) has been amended to emphasize that electronic reporting can only occur upon approval by the Department.

Subdivisions (d) and (e) have been deleted as no longer necessary because currently both the birth certificate and the confidential medical report of birth are required to be filed electronically.

Section 201.07

Subdivision (a) was amended to indicate that the disclosure of confidential medical reports of birth shall not be compelled, in order to be consistent with the confidentiality provisions of Articles 3 and 11 of this Code.

Subdivision (b) was amended to include epidemiologic surveillance and investigation conducted by governmental public health agencies within the meaning of “scientific purposes”.

Section 201.09

A new §201.09 has been added to specify how, in a manner consistent with §4131 of the State Public Health Law, reports of foundlings filed by the City’s Commissioner of Children’s Services are to be treated and processed by the Department.

Section 201.11

Subdivision (a) has been amended to reflect gender neutrality. Paragraph (2) has been deleted as the submission of a certificate of birth on an application for a delayed registration of birth no longer reflects the Department’s application process.

Subdivision (b) was amended to correct legal nomenclature distinguishing a “subsection” and a “paragraph”.

Subdivision (c) was deleted as no longer necessary given that the new §201.09 comprehensively covers the handling of foundling reports. A new subdivision (c) has been added to clarify that an application for a delayed registration of birth will not be granted for a person who is already deceased.

The Proposal is as follows:

Note – Matter in brackets [] is to be deleted
Matter underlined is new

RESOLVED, that, effective January 1, 2010, Article 201 of the New York City Health Code be and the same hereby is revised, to be printed together with explanatory notes to read as follows:

Article 201

Births

Introductory Notes

This article contains provisions for the reporting of births occurring in the City, for the maintenance of registries of births and for the reporting of births not reported at the time of the event.

§201.01 **Definitions.**

When used in this title:

(a) “Live birth” or “birth” means the complete expulsion or extraction from its mother of a product of conception, regardless of the duration of pregnancy, which after expulsion or

extraction shows evidence of life, such as breathing, beating of the heart, pulsation of the umbilical cord or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached.

(b) “Person in charge of a hospital” means the officer or employee who is responsible for the administration of a hospital or similar institution and includes but is not limited to a person holding the title of chief executive officer, administrator, superintendent, director or executive director.

(c) “Hospital” means a facility or institution licensed pursuant to Article 28 of the State Public Health Law and defined as such in §2801 of said law.

Notes:

Subdivision (b) was amended and subdivision (c) was added by resolution adopted on []. The definition of “hospital” is intended to capture the entire range of facilities that are licensed by the State Department of Health pursuant to Article 28 of the State Public Health Law, including in-patient hospitals and birthing centers that are so licensed.

§201.03 **Reporting births.**

(a) When a live birth occurs in the City, it shall be reported to the Department as follows:

(1) If the birth occurs in a hospital or [on its ambulance service] en route thereto, by the person in charge of such hospital or his or her designee; or,

(2) If the birth occurs elsewhere than in a hospital or en route thereto, by the physician, [or nurse] licensed midwife or registered physician assistant, in attendance at or after such birth; or,

(3) If a [nurse midwife] physician, licensed midwife or registered physician assistant attends at or after the birth elsewhere than in a hospital, or en route thereto, as an associate of a hospital, by the person in charge of the [maternity clinic or] hospital with which he or she is associated or by the designee of such person in charge; or,

(4) If the birth occurs without the attendance of a physician, [or nurse midwife] licensed midwife or registered physician assistant, by either of the parents of the child or, if no parent is alive, by the next of kin of the child or any person present at the birth.

(b) A person required to report a live birth pursuant to [subsection] paragraphs [(a)](1), (2) or (3) of subdivision (a) of this section shall file a certificate of birth and a confidential medical report, and a person required to report pursuant to [subsection]

paragraph [(a)](4) of subdivision (a) of this section shall file a certificate of birth only. Reports shall be filed within 5 business days after the birth with the office maintained and designated by the Department for such purposes.

(c) The person required to report a birth shall provide to the Department information that was required to be reported, but that was not so reported, within five business days of that person receiving the information.

(d) Upon a request by the Department for additional information that may be necessary to complete, clarify or verify the information required to be reported, the person required to report a birth shall provide such information to the Department within five business days of the request.

Notes:

This section was enacted by resolution adopted on []. This section focuses on who is required to file a report of a live birth with the Department. Section 201.05 concerns who must prepare and certify such reports. Throughout this section and others in this Article, the phrase “or on its ambulance service” has been replaced by “en route thereto” to acknowledge the fact that ambulance services can be independent of hospitals and to encompass births that may occur en route to a hospital, such as in an automobile, taxicab or police car. This section also acknowledges the broader range of licensed health care professionals that can participate at or after a birth. Subdivisions (c) and (d) are new, and have been added to require reporters to submit additional information, and to clarify the Department’s authority to require additional information.

§201.05 Preparation and certification of certificate of birth and confidential medical report of birth.

(a) The certificate of birth and confidential medical report shall be prepared and certified by the person required to file the same pursuant to §201.03, but when the birth occurs in a hospital or [on its ambulance service] en route thereto, the certificate and the confidential medical report [may] shall be prepared and certified by the physician, licensed midwife or registered physician assistant in attendance or assisting, or by a certified nurse practitioner or registered professional nurse present at or after the birth, or by a designee of the person in charge of the hospital who is trained or approved by the Department.

When a physician, licensed [nurse] midwife or registered physician assistant attends at or after a birth elsewhere than in a hospital or en route thereto, he or she shall prepare and certify the certificate and confidential medical report. A person certifying a certificate

and confidential medical report shall examine said documents for correctness of the information contained thereon and make any necessary changes.

(b) The certificate and confidential medical report shall be prepared on forms prescribed by the Board and furnished by the Department and shall contain no statement indicating the marital name or status of the mother or whether the child was born in or out of wedlock. The person preparing the certificate shall enter all information required by the form provided by the Department, except that in case of a child born out of wedlock [he] such person shall not enter the name of the putative father unless there is submitted to [him] the preparer a verified written consent of the putative father pursuant to §17-166(d) of the Administrative Code or a voluntary acknowledgement of paternity pursuant to §4135-b [Title I of Article 41]of the State Public Health Law. When the birth occurs in a hospital or [on its ambulance service] en route thereto, the information required by the forms shall be taken from the hospital records of the case. In a hospital, worksheets provided or otherwise approved by the Department shall be used in the preparation of the certificate and confidential medical report, and if such worksheets are used by individuals other than a physician, licensed midwife, registered professional nurse, certified nurse practitioner or registered physician assistant, then such individuals shall be trained or approved by the Department. Worksheets shall be retained by the hospital for a period of at least three years from the date of the birth, and shall, upon request, be made available to the Department for inspection.

(c) All live births occurring in the City [of New York on or after January 1, 1997] at facilities reporting 100 or more live births per year shall be reported to the Department electronically by means of computer programs specified and provided or otherwise authorized for use by the Department. All facilities at which fewer than 100 live births are reported per year may, at their election and upon approval by the Department, implement an electronic birth certificate reporting system or continue to report births on approved paper forms.

[(d) Facilities reporting births electronically shall file the confidential medical report of birth solely by means of electronic filing.

(e) Facilities reporting births electronically shall file the certificate of birth both electronically and on approved paper forms.]

(d[f]) All facilities required to file birth certificates electronically [after January 1, 1997] and facilities reporting fewer than 100 births per year which elect to report electronically, shall apply to the Department prior to implementing any system and, upon approval by the Department, shall make electronic reports only in such manner and on computer programs prescribed and provided or otherwise authorized by the Department. [Facilities reporting 100 or more live births per year may elect to commence filing birth certificates electronically, with the approval of the Department, prior to January 1, 1997 which the Department, at its discretion, may authorize. Such election shall be irrevocable upon commencement of electronic filing by such facilities.]

Notes:

Subdivisions (a), (b) and (c) were amended, subdivisions (d) and (e) were repealed and subdivision (f) was amended and re-lettered as a new subdivision (d) by resolution adopted on []. This section governs who is required to prepare and certify a report of a live birth, including a range of licensed professionals. The section now mentions certification in addition to preparation in order to clarify what the long-standing practice and use of approved forms has been; namely that the reports must be signed, whether in hardcopy or electronically. For births occurring in or en route to a hospital, worksheets approved by the Department must be used and retained by the hospital for at least three years.

§201.07 Confidential medical report of birth; not subject to compelled disclosure [subpoena] or inspection.

(a) The confidential medical report of birth shall [not] be confidential and not subject to compelled disclosure [subpoena] 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 may, however, approve the inspection of such medical reports for scientific purposes.

(b) Within the context of this section, scientific purposes shall mean epidemiologic surveillance and investigation by a governmental public health agency, research, [and/]or the compilation of statistics relating factors bearing on disease incidence, prevalence, mortality or treatment.

Notes:

Section 201.07 was amended by resolution adopted on []. The confidential medical report of birth is still not subject to disclosure except as specified in the section. The phraseology of subdivision (a) was changed to “confidential and not subject to compelled disclosure” in order to broaden the prohibition on disclosure and to conform to the language of other Articles in this Code. Epidemiologic surveillance and investigations by a governmental public health agency are now specified as within the meaning of “scientific purposes” so as to permit disclosure with the approval of the Commissioner.

§201.09 Foundlings.

(a) The report of the finding of a child whose parents are unknown, filed by the Commissioner of the City Administration for Children’s Services in accordance with the provisions of subdivision two of §398 of the State Social Services Law, shall constitute the birth record of such child.

(b) The address or location where such child was found shall be considered as the place of birth, and the date of birth shall be that determined by the Commissioner of the City Administration for Children’s Services as the approximate date of birth.

(c) If, however, such child is subsequently identified, and a certificate of birth for such child has been duly filed either before or following identification, the report of the Commissioner of the City Administration for Children’s Services shall be placed under seal by the Department, and such seal shall not be broken except upon order of a court of competent jurisdiction.

Notes:

Section 201.09 was added by resolution adopted on []. This section is new and tracks §4131 of the State Public Health Law.

§201.11 Delayed registration of births.

(a) When a birth in the City is not recorded in the Department within one year following the birth, it may be recorded with the approval of the Commissioner or the Commissioner’s designee [other personnel of the Department designated by him].

Application for such delayed registration shall be made on a form furnished by the Department by the parents or surviving parent, or by the guardian of the person whose birth is to be recorded, if such person is a minor, or by the person himself or herself if he

or she is 18 years of age or over and his or her parents are dead. The application shall be accompanied by the following:

(1) A certified statement issued by the Department that a search was made for the record of birth in question and that such record was not found; and

[(2) A certificate of birth on a delayed registration form prescribed by the Board and furnished by the Department. The certificate shall state the facts relating to the birth as of the date of birth and shall be signed by the physician, nurse midwife or midwife who attended at the birth, or if the physician, nurse midwife or midwife is dead or not available, or if there was no such person in attendance, it shall be signed by the person in charge of the hospital in which the birth occurred or by the parents or surviving parent, or by the guardian of the person whose birth is to be recorded. If none of these persons is alive or available, and the person whose birth is to be recorded is over 18 years of age, he shall sign the certificate, and,]

(2[3]) Such documentary and other evidence as will establish to the satisfaction of the Commissioner or [his] the Commissioner's designee the facts and date of birth as alleged in the application. The burden of submitting convincing proof rests with the applicant.

(b) When an application for delayed registration has been granted and a certificate of birth on a delayed registration form is filed pursuant to this section, the Department shall issue to the applicant without further charge, in exchange for the certified statement submitted pursuant to [subsection] paragraph (1) of subdivision (a) of this section, a certified copy of the certificate of birth.

(c) No application for delayed registration shall be granted, and no delayed certificate of birth shall be registered or issued for a deceased person. [If a report of foundling, prepared by the City commissioner of welfare pursuant to §398(2)(e) of the Social Welfare Law is not filed with the Department before the end of the calendar year following the year in which the child was found, it shall be filed as delayed registration of birth.]

Notes:

Subdivisions (a) and (b) were amended, paragraph (2) of subdivision (a) was deleted, and subdivision (c) was repealed and reenacted by resolution adopted on []. This section remains essentially the same, except that prior subdivision (c), relating to foundlings, was deleted in light of the new section 201.09. A new subdivision (c) was

added to clarify that delayed registrations of birth cannot be issued for individuals who are already deceased.