



NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Notice of Public Hearing and Opportunity to Comment on Proposed Rule

What are we proposing? The New York City Department of Health and Mental Hygiene (“Department”) is proposing that the Board of Health amend Section 207.05 of Article 207 of the New York City Health Code to eliminate the requirement that a person requesting a change to the gender marker on their birth certificate present proof of convertive surgery before a new birth certificate will be issued, and instead allow a gender correction upon the filing of an affirmation or affidavit by certain licensed professionals. In addition, the Department is proposing that the Board of Health also eliminate the requirement that a person requesting such a correction also have legally changed his or her name.

When and where is the hearing? The Department will hold a public hearing on the proposed rule. The public hearing will take place at 10 AM until 12 PM on November 17, 2014. The hearing will be 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 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 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 17, 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 17, 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 November 3, 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 Department to make this rule? Section 556(c) of the New York City Charter ("Charter") grants the Department jurisdiction to supervise and control the registration of births. Section 558(b), (c), and (g) of the Charter empowers the Board of Health 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 also empowers the Board of Health to provide in the Health Code a process for amending a birth certificate. Section 1043(a) of the Charter grants rule-making powers to the Department.

Where can I find the Health Code? The Health Code is in Title 24 of the Rules of the City of New York.

What rules govern the rulemaking process? The Department must satisfy the requirements of section 1043 of the Charter when creating or changing rules. This notice is made according to the requirements of Section 1043(b) of the Charter.

Statement of Basis and Purpose of Proposed Rule

In 1971, the Board of Health amended New York City Health Code Section 207.05 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 subsection (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. After 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 rule proposes to eliminate 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.¹ 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.² 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 Department proposes that the Board of Health amend 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. The Department proposes to require an affirmation from a physician licensed to practice in the United States, or an affidavit from a doctoral-level psychologist,

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

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

clinical social worker, physician assistant, nurse practitioner, marriage and family therapist, mental health counselor, or midwife, licensed to practice in the United States, 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 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, 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.

The Department is also proposing that the Board of Health amend Section 207.05 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 Department is requesting that the Board of Health amend Section 207.13 regarding fees to simply reflect the proposed removal of the “convertive surgery” requirement and replace it with the language consistent with the proposed changes to Section 207.05.

The proposal 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 material 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 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 accurately reflects the applicant’s gender identity; or

(B) an affidavit from a doctoral level psychologist (PhD or PsyD) in clinical or counseling psychology, 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 accurately reflects the applicant's 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 XXX, the Board of Health has amended Subdivision 207.05(a)(5) 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, 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 XXX, the Board of Health has amended Subdivision 207.13(f)(7) to replace "who has undergone convertive surgery" with "correct the gender marker on their birth certificate."

**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: Filing of New Birth Certificates

REFERENCE NUMBER: DOHMH-43

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/ Sabrina Fong
Mayor's Office of Operations

10/2/2014
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: Filing of New Birth Certificates

REFERENCE NUMBER: 2014 RG 037

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 2, 2014