



**DEPARTMENT OF HEALTH AND MENTAL HYGIENE
BOARD OF HEALTH**

**Notice of Public Hearing and Opportunity to Comment
on Proposed Amendments to the New York City Health Code**

What are we proposing? The Department of Health and Mental Hygiene is proposing that the Board of Health amend Article 181 of the New York City Health Code by repealing §181.21. This proposal was not included in the Department's Regulatory Agenda for FY 2014 because the Department did not anticipate the amendment at that time.

When and where is the hearing? The Department will hold a public hearing on the proposed Health Code amendments from 2PM to 4PM on July 28, 2015 in Room 3-32
New York City Department of Health and Mental Hygiene
Gotham Center, 42-09 28th Street, 14th Floor
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 comments to resolutioncomments@health.nyc.gov
- **Mail.** You can mail 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 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 347-396-6078/6116. You can also sign up in the hearing room before or during the hearing on July 28, 2015. 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 28, 2015.

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 July 14, 2015.

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 Board of Health to make these amendments? Section 558 of the City Charter authorizes the Board of Health to adopt and amend the Health Code and to include in the Health Code all matters to which the authority of the Department extends.

Where can I find the Health Code and the Department's rules? The Health Code and the rules of the Department of Health and Mental Hygiene are in title 24 of the Rules of the City of New York.

What rules govern the rulemaking process? The Board of Health must meet the requirements of §1043 of the City Charter when creating or changing the Health Code. This notice is made according to the requirements of City Charter §1043.

Statement of Basis and Purpose

Background

The Charter provides the Department of Health and Mental Hygiene (the "Department" or "DOHMH") with broad jurisdiction to protect and promote the health of all New Yorkers. The control of communicable disease is a core public health function. At its meeting on September 13, 2012, the Board of Health voted to amend Article 181 by adding a requirement that, prior to a circumcision involving direct oral suction (DOS) of infants less than 60 days of age, the person performing the circumcision obtain the written consent of a parent. In the consent, the parent acknowledges that he or she is aware that the Department recommends DOS, also known as *metzitzah b'peh*, not be performed because of the risk of brain damage and death.

Circumcisions that include DOS involve direct contact between the mouth of the practitioner designated by the religious community to perform a circumcision, known as a *mohel*, and the infant's circumcision wound. The consent requirement has generated opposition in the Orthodox Jewish community by persons who practice DOS. This opposition has made it difficult to enforce the consent requirement. Since the provision went into effect, there have been six cases of herpes simplex-1 (HSV-1) infection reported in infants following DOS in New York City, including four in 2014. In two of these six cases, the *mohel* who was associated with the case was identified in the course of the Department's case investigation. A signed consent form was provided by the *mohel* in only one of the two cases where the *mohel* was identified. There have also been reports in news media of *mohels* who overtly ignored the signed consent reform requirement and pledge to continue to do so.

The consent requirement was passed with the goal of educating parents about the risks associated with the practice of DOS. The opposition that the rule has generated has impeded and frustrated the Department's goal of educating parents about the risks associated with DOS. The Department hopes that it can educate more parents about DOS by distributing materials in certain hospitals and pediatric and OB/GYN practices. This educational initiative will be more effective if the Department can restore a strong relationship with this community. Repealing the consent requirement will serve as an important step in restoring this relationship. Accordingly, the Department is asking the Board to repeal section 181.21 of the Health Code.

Statutory Authority

These proposed amendments to the Health Code are promulgated pursuant to §558 and §1043 of the Charter. Sections 558(b) and (c) of the Charter empower the Board of Health to amend the Health Code and to include in the Health Code all matters to which the authority of the Department extends. Section 556 of the Charter provides the Department with broad jurisdiction over all matters affecting health in the City. Section 1043 grants the Department rule-making authority. The amendment is also proposed pursuant to the Department's historic power to supervise the control of communicable disease in New York City.

The proposal is as follows:

Note- matter in [] brackets to be deleted;

Matter underlined is new.

RESOLVED, that section 181.21 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, regarding consent for direct oral suction as part of a circumcision, is hereby REPEALED, and explanatory notes be printed to read as follows:

Notes: §181.21 (Consent for direct oral suction as part of a circumcision) was repealed by resolution adopted by the Board of Health at its meeting on XXX.

**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: Repeal of Rules Governing Consent for Certain Circumcision Practices
(Health Code Article 181)**

REFERENCE NUMBER: DOHMH -57

RULEMAKING AGENCY: DOHMH

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/ Francisco X. Navarro
Mayor's Office of Operations

June 4, 2015
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: Repeal of Rules Governing Consent for Certain Circumcision Practices (Health Code Article 181)

REFERENCE NUMBER: 2015 RG 020

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: June 4, 2015