



## Department of Health and Mental Hygiene

### Board of Health

#### Notice of Adoption of Amendments to Articles 201, 203, 205 and 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 Articles 201, 203, 205 and 207 of the New York City Health Code (the “Health Code”) was published in the City Record on September 21, 2015 and a public hearing was held on October 23, 2015. No one testified and no written comments were submitted. On its own initiative, the New York City Department of Health and Mental Hygiene (the “Department”) made minor changes to these rules for the purposes of clarification as detailed below. At its meeting on March 15, 2016, 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 Sections 558 and 1043 of the New York City Charter (“the Charter”). Section 558(b) and (c) of the Charter empowers 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 Department extends. Section 1043 grants the Department rulemaking authority.

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

##### *Background and New Requirements*

1. Section 201.07(a) of Article 201 (Confidential medical report of birth; not subject to compelled disclosure or inspection), Section 203.07(a) of Article 203 (Confidential medical report of spontaneous termination of pregnancy and certificate of induced termination of pregnancy; not subject to compelled disclosure or inspection), Sections 205.07(a) and 205.07(c) of Article 205 (Confidential medical report of death; not subject to compelled disclosure or inspection)

The Department amends Section 201.07(a) of Article 201, Section 203.07(a) of Article 203, and Sections 205.07(a) and 205.07(c) of Article 205 of the Health Code, to authorize, in addition to the Commissioner, the Commissioner’s designee to approve inspection of confidential medical reports of birth, spontaneous terminations of pregnancy (miscarriages), and death. This will ensure greater consistency among Health Code provisions requiring the approval of the Commissioner or the Commissioner’s designee to grant requests to inspect these documents and make it easier to process requests requiring the Commissioner’s approval.

2. Section 207.01(a) and 207.01(c) (Correction of records; application and approval; accompanying documents)

The Department amends Section 207.01(a) of Article 207 of the Health Code to authorize the Department, consistent with its current ability to correct confidential medical reports of death, to correct confidential medical reports of birth and confidential medical reports of spontaneous terminations of pregnancy (miscarriages) based on new or corrected information it receives from medical facilities. Furthermore, the Department removes the reference to deaths occurring on or after January 1, 2010, to be consistent with Section 205.07(a).

The Department also amends Section 207.01(c) of Article 207 of the Health Code to allow funeral directors, undertakers, or the Office of Chief Medical Examiner (OCME) to make certain corrections to death certificates using the Electronic Death Registration System (EDRS) without first obtaining the Department's approval. This will expedite the processing of death records and burial permits. Funeral directors, undertakers, or the OCME will be able to correct only the name of the funeral establishment or the method, place (e.g., cemetery or crematory), location (e.g., city, state, or foreign country), or date of disposition (e.g., burial, cremation or transport out of the city). To maintain record integrity, the EDRS will not allow funeral directors, undertakers, or the OCME to change fields like date of birth, usual residence (e.g., state, county, city, town, or street number of residence) and Social Security number.

### 3. Section 207.13 (Fees for vital statistics services)

The Department amends Section 207.13 of Article 207 of the Health Code to provide specific processes for verifying information contained in birth certificates, death certificates, and certificates of spontaneous termination of pregnancy (miscarriages). This will enable authorized users of the National Association for Public Health Statistics and Information Systems (NAPHSIS) Electronic Verification of Vital Events (EVVE) System, such as agencies of the City or State of New York, other government bodies, annuity companies, medical providers and attorneys representing estates, to verify facts contained in the Department's records.

### *Statutory Authority*

These amendments to the New York City Health Code ("the Health Code") are promulgated pursuant to Sections 558 and 1043 of the New York City Charter ("the Charter"). Section 558 of the Charter empowers 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 rulemaking authority.

"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 subdivision (a) of Section 201.07 of Article 201 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is hereby amended, to be printed together with explanatory notes, to read as follows:

(a) The confidential medical report of birth shall be confidential and not subject to compelled disclosure 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 or

the Commissioner's designee may, however, approve the inspection of such medical reports for scientific purposes.

*Notes:* By resolution adopted on March 15, 2016, the Department amended subdivision (a) of Section 201.07 of Article 201 to authorize the Commissioner's designee to approve the inspection of confidential medical reports of birth for scientific purposes.

**RESOLVED**, that subdivision (a) of Section 203.07 of Article 203 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is hereby amended, to be printed together with explanatory notes, to read as follows:

(a) The confidential medical report of a spontaneous termination of pregnancy shall be confidential and not subject to compelled disclosure 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 or the Commissioner's designee may, however, approve the inspection of such medical reports for scientific purposes.

*Notes:* By resolution adopted on March 15, 2015, the Department amended subdivision (a) of Section 203.07 of Article 203 to authorize the Commissioner's designee to approve the inspection, for scientific purposes, of confidential medical reports of spontaneous terminations of pregnancy.

**RESOLVED**, that subdivisions (a) and (c) of Section 205.07 of Article 205 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is hereby amended, to be printed together with explanatory notes, to read as follows:

(a) The confidential medical report of death shall be confidential and not subject to compelled disclosure 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, or by researchers authorized and approved by the National Death Index of the National Center for Health Statistics of the federal Centers for Disease Control and Prevention, or successor agency. The Commissioner or the Commissioner's designee may, however, approve the inspection of such confidential medical reports for scientific purposes and by the spouse, domestic partner, parent, child, sibling, grandparent or grandchild of the deceased or by the individual identified on the death certificate filed with the Department as the person in control of disposition.

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(c) Notwithstanding subsection (a), upon application of an individual licensed to practice medicine, the Commissioner or the Commissioner's designee may release a certified copy of the confidential medical report of death, or, in his or her sole discretion, provide abstracts of such information, when, and to the extent that:

- (1) a need for the family medical history has been demonstrated, to the satisfaction of the Commissioner or the Commissioner's designee, in order to counsel or to diagnose and/or treat an illness or condition in an individual; and
- (2) the information contained in the confidential medical report of death has been demonstrated to the satisfaction of the [commissioner] Commissioner or the Commissioner's designee, to be otherwise unavailable.

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*Notes:* By resolution adopted on March 15, 2016, the Department amended subdivision (a) of Section 205.07 of Article 205 to authorize the Commissioner's designee to approve inspections of confidential medical reports for scientific purposes and by persons listed on death certificates filed with the Department. The Department also amended subdivision (c) of Section 205.07 to authorize the Commissioner's designee to release certified copies of confidential medical reports of death to physicians.

**RESOLVED**, that subdivisions (a) and (c) of Section 207.01 of Article 207 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is hereby amended, to be printed together with explanatory notes, to read as follows:

(a) The Commissioner or the Commissioner's designee may approve the amendment of a birth, termination of pregnancy or death certificate, or of a confidential medical report of birth, spontaneous termination of pregnancy or death [for deaths occurring on or after January 1, 2010]. Application shall be made on a form furnished by the Department. Application for amendment of a birth certificate shall be made by the parents or surviving parent, or by the legal guardian of the person whose birth certificate is to be corrected or by the person if such person is 18 years of age or over. Application for amendment of a spontaneous termination of pregnancy certificate shall be made by the parents or surviving parent. Application for amendment of a death certificate[,] or [of a] confidential medical report of death shall be made by the person in control of disposition as defined in Article 205 of this Code or by the person identified on the death certificate as providing the personal particulars pursuant to Article 205 of this Code.

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(c) No application shall be approved unless the Commissioner or the Commissioner's designee is satisfied that the evidence submitted shows the true facts and that an error or omission was made at the time of preparing and filing of the certificate or confidential medical report of birth, spontaneous termination of pregnancy or death, or that the name of a person named in a birth certificate has been changed pursuant to court order. However, a funeral director, undertaker or the Office of Chief Medical Examiner who has taken control of human remains may, without approval by the Commissioner or the Commissioner's designee, use the Electronic Death Registration System to amend a certificate or confidential medical report of death if the funeral director, undertaker or the Office of Chief Medical Examiner is amending the name of the funeral establishment or the method, place, location, or date of disposition.

*Notes:* By resolution adopted on March 15, 2016, the Department amended subdivision (a) of Section 207.01 of Article 207 to authorize the Department to correct confidential medical reports of birth and confidential medical reports of spontaneous terminations of pregnancy, and to remove the reference to deaths occurring on or after January 1, 2010 consistent with Health Code Section 205.07(a). The Department also amended subdivision (c) of Section 207.01 to authorize funeral directors and undertakers or the Office of Chief Medical Examiner using the Electronic Death Registration System to make certain corrections without first obtaining Departmental approval.

**RESOLVED**, that subdivision (e) of Section 207.13 of Article 207 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is hereby amended, to be printed together with explanatory notes, to read as follows:

(e) The Department may [issue without charge verifications of] verify information contained on birth, spontaneous termination of pregnancy or death certificates filed with the Department when such [information is provided and a] verification is requested by [an agency of the City or State of New York. The Department may issue such verifications for a negotiated and agreed-upon fee, and in a manner it describes, to: other governmental agencies, whether] authorized users of the National Association for Public Health Statistics and Information Systems (NAPHSIS) Electronic Verification of Vital Events (EVVE) System who are foreign or domestic [;] governments, agencies of the City or State of New York, benefit-paying parties such as annuity companies and pension plans that demonstrate a need for such information to determine whether the benefits they are paying should be terminated[;], a physician licensed to practice in the United States who demonstrates that such information is needed to determine whether a patient he or she is treating has died[;], a hospital that demonstrates that such information is needed to determine whether a patient it is treating has died[; and] or an attorney licensed to practice in the United States who demonstrates that the information is necessary to administer an estate.

*Notes:* By resolution adopted on March 15, 2016, the Department amended subdivision (e) of Section 207.13 of Article 207 to provide authorized users of the National Association for Public Health Statistics and Information Systems (NAPHSIS) Electronic Verification of Vital Events (EVVE) System with a means of verifying information contained in birth certificates, death certificates, and certificates of spontaneous termination of pregnancy.