



**NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE
BOARD OF HEALTH**

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

In compliance with section 1043(b) of the New York City Charter (“the Charter”) and pursuant to the authority granted to the Board of Health by section 558 of said Charter, a notice of intention (“NOI”) to amend Section 207.05 of the New York City Health Code (“the Health Code”) was published in the New York City Record on June 12, 2018, and a public hearing was held on July 24, 2018. No one testified at the hearing. Two written comments were submitted. After consideration of the comments received, no changes have been made to the proposed amendment. At its meeting on September 12, 2018 the Board of Health adopted the following resolution.

Statement of Basis and Purpose

Background

Amendments to sex designation on Birth Records

In 1971, the Board of Health amended Section 207.05 of the Health Code to allow the Department to file a new birth certificate with a corrected gender marker of male or female for a person who both obtained a court order changing his or her name and who underwent “convertive” surgery. The Department had, generally but not exclusively, interpreted the requirement for convertive surgery to mean genital surgery. As a result, transgender applicants requesting new birth certificates were required to submit medical records demonstrating that they had undergone genital surgery to change sex and the number of requests for a corrected birth certificate was relatively small. For example, in 2012, the number of new birth certificates approved and issued to transgender applicants was 20 and, in 2013 only 22 new birth certificates were issued.

In 2014, the Board of Health amended Section 207.05(a)(5) to eliminate the requirement for convertive surgery. This amendment allowed applicants to request a new birth certificate with a changed gender marker of male or female based on an affirmation from a physician licensed to practice in the United States, or an affidavit from a doctoral-level psychologist clinical social worker, physician assistant, nurse practitioner, marriage and family therapist, mental health counselor, or midwife, licensed to practice in the United States. Eliminating the requirement to demonstrate genital surgery led to a dramatic increase in requests for new birth certificates; from January 2015, when the amendment became effective, through February 2018, the Department issued 1,047 new birth certificates to transgender applicants.

Most recently, the Department, in discussion with other states and advocates, found that having practitioners affirm or attest to a person's gender identity is both a potential barrier and does not add sufficient value in the process of deciding whether a new birth certificate should be issued. Anecdotal evidence suggests that practitioners simply comply with their patients' requests when asked to affirm or attest to a patient's request for a change of gender.

The Board is now (1) eliminating the requirement that a person requesting a change to the sex designation on a birth certificate present proof from a health professional and instead allow applicants to self-attest as to their gender, and (2) approving "X" as an additional sex designation gender option that is not exclusively female or male for birth certificate sex change requests. The sex designation on the US Standard Certificate of Live Birth is completed by the hospital or attendant at the time of birth. The four choices are male, female, unknown and undetermined. These are "sex" categories and not gender categories. The original public health data reported by the hospital is not changed under this amendment. "Gender" categories are only applied on the birth certificate during an amendment process. When the gender on a birth certificate is amended the original record is placed under seal and a new record is created. There is no indication on the record of the amendment history. A sex designation of "X" will be allowed for those applicants who want a designation other than female or male on their birth certificate.

Health Code Amendment

The Board is eliminating the requirement that a person requesting a change to the sex designation on a birth certificate present proof from a health professional. Instead, applicants will be able to self-attest as to their gender. Additionally, the Board has approved "X" as an additional designation for persons who do not identify as exclusively female or male. The Department believes that the amendments are important steps in enabling people to obtain official documents that accurately reflect their gender identity. The Board is making these amendments effective January 1, 2019.

Statutory Authority

Pursuant to section 556(c) of the Charter and section 17-166 of the Administrative Code, the Department is responsible for supervising and controlling the registration of births and deaths that occur in New York City. Section 558(c) of the Charter requires the Board to include in the Health Code provisions related to maintaining a registry of births and deaths, as well as provisions related to changes or alterations of any birth or death certificate upon proof satisfactory to the Commissioner of Health and the manner in which these certificates may be issued and otherwise examined. Section 17-167.1 of the Administrative Code and Health Code section 207.05 delineate the requirements to change the sex designation on birth records. Section

558(b) of the Charter specifically authorizes the Board to add to, alter, and amend the Health Code.

RESOLVED, that subparagraph (i) of paragraph (5) of subdivision (a) of section 207.05 of Article 207 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, be amended to read as follows:

(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] who is at least 18 years old and named as the registrant on a birth record provides a notarized statement requesting that the sex designation on such birth record be changed to female, male, or X, to conform to the person's gender identity, where X signifies a sex designation that is not exclusively female nor exclusively male; 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] The living parents named on the birth certificate of a registrant who is less than 18 years old or the legal guardians of such registrant provide a notarized statement or statements requesting that the sex designation on such birth record be changed to female, male, or X, where X signifies a sex designation that is not exclusively female nor exclusively male.

RESOLVED FURTHER, that the foregoing amendments to section 207.05 of the Health Code, set forth in Title 24 of the Rules of the City of New York, shall be effective January 1, 2019.