

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 3103 (16 Del.C. §3103)
16 DE Admin. Code 4205

FINAL

ORDER

4205 Vital Statistics

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Regulations Governing Vital Statistics. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, Section 3104.

On November 1, 2016 (Volume 20, Issue 5), DHSS published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 Del.C. §10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by December 12, 2016, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

Written comments were received during the public comment period and evaluated. The results of that evaluation are summarized in the accompanying "Summary of Evidence."

SUMMARY OF EVIDENCE

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing Home Health Agencies - Aide Only (Licensure) were published in the Delaware *Register of Regulations*. Written comments were received on the proposed regulations during the public comment period (November 1, 2016 through December 12, 2016).

Entities offering written comments include:

- ACLU of Delaware, Kathleen MacRae, Executive Director
- Equality Delaware, Inc., Lisa Goodman, President and Equality Delaware Foundation, Mark Purpura, President
- National Center for Transgender Equality, Arli Christian, State Policy Counsel

Comment from the Delaware ACLU

I write in support of the proposed amendments to 16 Del. Admin. Code 4205 (the "Regulation") that were published in the Delaware *Register of Regulations* on November 1, 2016.

The proposed amendments to the Regulation are necessary updates to the requirements for amending a birth certificate based on gender identity in order to align the birth certificate amendment process with contemporary medical standards. Currently, the Regulation requires both gender transition surgery and a court order confirming the surgery to be provided in order to amend a person's birth certificate to accurately reflect the person's gender identity. The proposed amendments to the Regulation would replace those requirements with an affidavit of gender identity by the person seeking to amend their birth certificate, along with an affidavit of a licensed medical or mental health professional stating that the individual seeking the birth certificate amendment has undergone appropriate treatment for that individual for the purpose of gender transition. The ACLU of Delaware is pleased that the proposed amendments to the Regulation recognize that contemporary medical standards do not require any particular blanket form of treatment for gender transition, and are based on assessments of appropriate treatment for gender transition on an individualized basis. The flexibility afforded by the proposed amendments is consistent with contemporary medical standards and will allow more transgender individuals to have legitimate access to the birth certificate amendment process.

It is vitally important to the well-being of transgender individuals that they be permitted to have identity documents that accurately reflect their gender identity. In addition, it is also vitally important that transgender individuals have the ability to present identity documents that are consistent in terms of gender identity. Similar updates to the requirements for changing the gender marker on drivers licenses was implemented by the State of Delaware a number of years ago. The proposed amendments to the Regulation will allow more transgender individuals to have identity documents (drivers license, passport, etc.) that consistently match in terms of gender identity.

We thank the Office of Vital Statistics for their work in promulgating the proposed amendments to the Regulation, and urge the Office of Vital Statistics to enact the proposed amendments to the Regulation as published as soon as possible.

Comments from Equality Delaware

On behalf of Equality Delaware, Inc. and Equality Delaware Foundation, and the thousands of Delawareans who are members or supporters of our organizations, we write in support of the proposed amendments to 16 Del. Admin. Code 4205 (the "Regulation") that were published in the Delaware *Register of Regulations* on November 1, 2016.

The proposed amendments to the Regulation are necessary updates to the requirements for amending a birth certificate based on gender identity in order to align the birth certificate amendment process with contemporary medical standards. Currently, the Regulation requires both gender transition surgery and a court order confirming the surgery to be provided in order to amend a person's birth certificate to accurately reflect the person's gender identity. The proposed amendments to the Regulation would replace those requirements with an affidavit of gender identity by the person seeking to amend their birth certificate, along with an affidavit of a licensed medical or mental health professional stating that the individual seeking the birth certificate amendment has undergone appropriate treatment for that individual for the purpose of gender transition. We are pleased that the proposed amendments to the Regulation recognize that contemporary medical standards do not require any particular blanket form of treatment for gender transition, and are based on assessments of appropriate treatment for gender transition on an individualized basis. The flexibility afforded by the proposed amendments is consistent with contemporary medical standards and will allow more transgender individuals to have legitimate access to the birth certificate amendment process.

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We thank the Office of Vital Statistics for their work in promulgating the proposed amendments to the Regulation, and urge the Office of Vital Statistics to enact the proposed amendments to the Regulation as published as soon as possible.

Comments from the National Center for Transgender Equality

NCTE submits these comments in support of proposed revisions to the regulations governing Vital Statistics in Title 16 Section 4205 of the Delaware Administrative Code. On behalf of NCTE constituents born in Delaware and in the interest of improving government policies for transgender people everywhere, NCTE is excited to see this modernization in progress. Under these proposed regulations, applicants can obtain new certificates of birth to amend their gender marker by submitting an affidavit from the applicant along with an affidavit from a licensed medical or mental health professional attesting to appropriate treatment for gender transition. This is a great improvement from the previous regulation that required applicants to obtain a court order indicating their sex had been changed by surgical procedure. Below we provide additional information to support why transgender people may need updated birth certificates, why proof of surgery should not be required, and why requiring a court order is unnecessarily burdensome.

Thank you so much for your work on these proposed revisions, and please accept these comments in full support of approval of these revisions to the DE Administrative Code Vital Statistics section.

Transgender People May Need to Amend the Gender Marker on Their Birth Certificates For Practical, Personal, and Safety Reasons

Birth certificates are a critical identity document used in many settings to verify an individual's identity, and having the correct gender marker is important for many practical reasons, in addition to validating a person's intrinsic dignity. Birth certificates are often requested for purposes related to employment, education, and family law, and are a critical identity document used in many settings to verify an individual's identity, and specifically to verify their citizenship. Even in settings where birth certificates themselves are not required, other identity documents based on birth certificates are often required. In order to avoid discrimination in these situations, transgender individuals need access to birth certificates that accurately reflect their gender.

Medical professionals have long recognized the importance of updated identity documents as an intrinsic part of gender transition. The American Psychological Association encourages "legal and social recognition of transgender individuals consistent with their gender identity and expression, including access to identity documents consistent with their gender identity and expression which do not involuntarily disclose their status as transgender for transgender people who permanently socially transition to another gender role."

Amending the gender marker on a birth certificates is important to help avoid discrimination and bias against transgender people. Data from the National Transgender Discrimination Survey shows that a lack of proper identification greatly contributes to discrimination. 40% of transgender people who have shown identification that has a gender marker different than their gender presentation have experienced harassment because of this discrepancy. Another 15% were denied entry or denied service. Three percent (3%) reported being assaulted because of mismatched IDs.² As a result, it is critically important that transgender people be able to provide official documents to potential and current employers that correspond to their gender identity without having to "out" themselves as transgender.

Gender Change Policies Should not Require Surgery or Any Specific Medical Treatment Because Gender

Transition Varies

Surgical requirements do not comport with contemporary health care standards, which recognize that gender transition is an individualized process that is not the same for all transgender people.³ Many transgender people cannot undergo surgery for a number of reasons, including fear of complications, the cost of surgery,⁴ inability to take time off school or work for the recovery period, and medical conditions that make surgery impossible. Furthermore, some people choose not to have surgery because they simply do not require it to feel comfortable in their new gender. The World Professional Association for Transgender Health (WPATH), an evidence-based international medical society devoted to understanding and properly treating transgender people, urged "governments and other authoritative bodies to move to eliminate requirements for identity recognition that require surgical procedures."

Removing the surgery requirement allows transgender people and their healthcare providers to choose the correct course of treatment for each individual without compelling people to undergo any unnecessary, inappropriate, or simply impossible treatment. Additionally, removing a surgery requirement from updating the gender marker on a birth certificate is important for individuals born with intersex conditions. "Intersex" is a general term used for a variety of conditions in which a person is born with a reproductive or sexual anatomy that doesn't seem to fit the typical definitions of female or male. Many intersex individuals may not require or desire surgery, but may have a gender marker on their birth certificate that does not align with who they are.

In the proposed Delaware regulations the requirement for proof of surgery is replaced by an affidavit attesting that the individual has had "surgical, hormonal, psychological, or other treatment appropriate for the individual for the purpose of gender transition." This attestation captures the range of treatments that may be appropriate, in each individual case, to facilitate gender transition, and makes updated gender markers accessible for many more transgender people.

Court Order Requirements are an Unnecessary Burden on Registrants

Removing the requirement for a court order avoids putting unnecessary burden on registrants. Court petitions are expensive and complicated, and not all individuals can access the court process. Moreover, not all courts and judges issue court orders for gender change, and even if they do, the standards vary greatly among judges. The majority of courts do not have a clear process or standard for issuing court orders for gender change, and thus some people are granted a petition for gender change while others are denied, often depending on that particular judge's level of education and understanding of transgender issues. Transgender individuals applying for a court order are left to determine how to submit a petition, what documentation a judge will request, what personal medical information they will have to divulge in the courtroom, and whether the judge will treat them with respect. Many transgender people navigate the process without access to legal assistance or financial support.

The court order process also poses many privacy issues as it requires transgender individuals to publicly reveal private medical information. Forcing people to discuss their gender identity and medical treatment they have undergone in open court can cause significant discomfort and psychological trauma. Even if the hearing is done in judge's chambers, and does not require an attorney, the hearing can be extremely intimidating. Additionally, public records of the proceeding can make the person more vulnerable to discrimination, and could expose transgender individuals to physical harm in some communities.

Because of these barriers, allowing an applicant to go directly to the Department of Vital Statistics to request an updated gender marker on their birth certificate is a more efficient and reliable process. The administrative option allows individuals to bypass the expensive and complicated process of obtaining a court order. An administrative procedure also streamlines the application process and ensures uniform access to updated birth certificates.

Conclusion: We Applaud and Support the Proposed Revisions to the DE Administrative Code 4205 Vital Statistics Section 10.7

We fully support and approve the revisions to the DE Administrative Code Vital Statistics pertaining to Amendment of Sex. These proposed regulations align with transgender people's needs to update the gender marker on their birth certificates. The revisions also reaffirm the contemporary healthcare standards while making the gender marker amendment process much more accessible for registrants.

FINDINGS OF FACT:

No changes were made to the regulations based on the comments received. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing Vital Statistics is adopted and shall become effective February 11, 2017, after publication of the final regulation in the Delaware *Register of Regulations*.

Rita M. Landgraf,
Secretary
1/13/2017

4205 Vital Statistics

16 **Del.C.** §3104 has established in the Division of Public Health an Office of Vital Statistics which shall install, maintain and operate the only system of vital statistics throughout this State. The Office of Vital Statistics shall have branch offices in each county. The Department of Health and Social Services shall designate one such branch as the central Office of Vital Statistics, and this branch shall be responsible for the supervision of the operation of the other vital statistics offices throughout this State.

1.0 Duties and Responsibilities of Branch Offices

(Authorization: Section 3105)

- 1.1 The State Registrar may delegate such duties and responsibilities to branch offices as he or she deems necessary to insure the efficient operation of the system of vital statistics. These duties may include any or all of the following:
 - 1.1.1 The receipt, processing, and maintenance of records of birth, death, fetal death, and marriage occurring within their respective counties. This includes the receipt of these records from the person responsible for their filing, checking them for accuracy and completeness, and forwarding them to the central Office of Vital Statistics at intervals prescribed by the State Registrar.
 - 1.1.2 Issuance of certified copies of birth, death, fetal death and marriage records. The records from which the certified copies are issued shall be those maintained in the branch office or shall be provided by the central Office of Vital Statistics. All forms and procedures used to issue the certified copies shall be provided or approved by the State Registrar. If it is deemed appropriate and feasible, any branch office may be provided access to all birth, death and marriage records filed in Delaware.
 - 1.1.3 Acting as the agent of the State Registrar in their designated area and providing assistance to physicians, hospitals, funeral directors, and others in matters related to the system of vital statistics.
 - 1.1.4 Performing such other duties as may be prescribed by the State Registrar.

2.0 Record Preservation

(Authorization: Section 3107)

- 2.1 When an authorized reproduction of a vital record has been properly prepared by the State Registrar in accordance with 29 **Del.C.** Ch. 5 and when all steps have been taken to insure the continued preservation of the information, the record from which such authorized reproduction was made may be disposed of in accordance with an approved disposition schedule. Such record may not be disposed of, however, until the quality of the authorized reproduction has been tested in accordance with 29 **Del.C.** Ch. 5 to insure that acceptable certified copies can be issued and until a security copy of such document has been placed in a secure location removed from the building where the authorized reproduction is housed. Such security copy shall be maintained in such a manner to insure that it can replace the authorized reproduction should the authorized reproduction be lost or destroyed.
- 2.2 The State Registrar shall update the appropriate retention and disposition schedules as necessary. The State Division of Historical and Cultural Affairs shall adhere to applicable state laws and regulations pertaining to vital records.

3.0 Form and Completion of Certificates and Reports

(Authorization: Sections 3108 and 3109)

- 3.1 Media, Forms, Certificates, Electronic Data Files. All forms, certificates, records, electronic data files, and reports used in the system of vital statistics are the property of the Department of Health and Social Services and shall be surrendered to the State Registrar upon demand. The forms prescribed and distributed by the State Registrar for reporting vital statistics shall be used only for official purposes. Only those forms furnished or approved by the State Registrar shall be used in the reporting of vital statistics or in making copies thereof. Electronic data records shall be accepted only when standards set by the State Registrar are met.
- 3.2 Requirements for Preparation of Certificates. All forms, certificates, and reports relating to vital statistics must either be type written or printed legibly in black, unfading ink, or stored on electronic media approved by the State Registrar. All signatures required shall be entered in black, unfading ink or stored electronically. Unless otherwise directed by the State Registrar, no certificate shall be complete and correct and acceptable for registration:
 - 3.2.1 That does not contain the certifier's name typed or printed legibly;

- 3.2.2 that does not supply all items of information called for thereon or satisfactorily account for their omission;
- 3.2.3 that contains alterations or erasures;
- 3.2.4 that does not contain handwritten signatures as required;
- 3.2.5 that is marked "copy" or "duplicate";
- 3.2.6 that is a carbon copy;
- 3.2.7 that is prepared on an improper form;
- 3.2.8 that contains improper or inconsistent data;
- 3.2.9 that contains an indefinite cause of death which denotes only symptoms of disease or conditions resulting from disease;
- 3.2.9-410 that is not prepared in conformity with regulations or instructions issued by the State Registrar.

4.0 Disclosure and Copies of Data from Vital Records

(Authorization: Section 3110)

4.1 To protect the integrity of vital records:

- 4.1.1 The State Registrar or other custodians of vital records shall not permit inspection of these records, or disclose information contained in vital statistics records, or copy or issue a copy of all or part of any such record unless he or she is satisfied that the applicant is authorized to obtain a copy or abstract of such record.
 - 4.1.1.1 Family members doing genealogical research and genealogists representing a family member may obtain copies of records needed for their research. Unless the registrant is deceased, appropriate authorizations shall be required from the registrant or relevant family members as defined in section 3110(b) for the release of the records. If family members, or genealogists representing them, are unable to establish the death of a registrant or to identify those closer family members authorized by Section 3110(b), they may obtain copies of marriage and death records only upon presentation of evidence satisfactory to the State Registrar that they are directly descended from a parent or grandparent of the registrant.
 - 4.1.1.2 The term "authorized representative" shall include an attorney, physician, funeral director, or other designated agent acting in behalf of the registrant or his or her family.
 - 4.1.1.3 The natural parents of adopted children, when neither has custody, and commercial firms or agencies requesting listings of names and addresses shall not be authorized to obtain copies or abstracts of the record.
- 4.1.2 The State Registrar or local custodian shall not issue a certified copy of a record until the applicant has provided sufficient information to locate the record. Whenever it shall be deemed necessary to establish an applicant's right to information from a vital record, the State Registrar or local custodian may also require identification of the applicant or a sworn statement.
- 4.1.3 When 72 years have elapsed after the date of birth, or 40 years have elapsed after the date of death or marriage, such records in the custody of the State Registrar shall become available to any person upon submission of an application containing sufficient information to locate the record. The State Registrar shall collect the same fee for each copy issued or search of the files made, as is charged for a single certified copy. The same fee shall apply for vital records in the possession of the Division of Historical and Cultural Affairs.
- 4.1.4 All forms and procedures used in the issuance of certified copies of vital records in the state shall be uniform and provided or approved by the State Registrar. All certified copies issued shall have security features that deter the document from being altered, counterfeited, duplicated, or simulated without ready detection. All certified copies shall include, at a minimum, the following security features:
 - 4.1.4.1 sensitized security paper;
 - 4.1.4.2 background security design;
 - 4.1.4.3 copy void pantograph;
 - 4.1.4.4 consecutive numbering;
 - 4.1.4.5 engraved border;
- 4.1.5 A certified copy or other copy of a death certificate containing the cause of death information shall not be issued except as follows:
 - 4.1.5.1 Upon specific request of the spouse, children, parents, or other next of kin of the decedent or their respective authorized representatives; or

- 4.1.5.2 when a documented need for the cause of death to establish a legal right or claim has been demonstrated; or
- 4.1.5.3 when the request for the copy is made by or on behalf of an organization that provides benefits to the decedent's survivors or beneficiaries; or
- 4.1.5.4 upon specific request by local, state, or Federal agencies for research or administrative purposes approved by the Department of Health and Social Services; or
- 4.1.5.5 when needed for statistical or research activities provided requests for such information conform to the *Regulations Governing The Release of Vital Statistics Data For Research And Statistical Purposes* established by the Department of Health and Social Services; or
- 4.1.5.6 upon receipt of an order from a court of competent jurisdiction ordering such release.
- 4.1.6 Nothing in these regulations shall be construed to permit disclosure of information contained in the "Information for Medical and Health Use Only" section of the certificate of birth or the "Information for Statistical Purposes Only" section of the certificate of marriage or certificate of divorce or annulment unless specifically authorized by the Department of Health and Social Services for statistical or research purposes. Such data shall not be subject to subpoena or court order and shall not be admissible before any court, tribunal, or other judicial body.
- 4.1.7 When the State Registrar receives information that a certificate may have been registered through fraud or misrepresentation, he or she shall withhold issuance of any copy of that certificate pending an administrative hearing. The sole purpose of the hearing shall be to determine whether ~~their~~ there is sufficient evidence to continue to withhold issuance of copies of said certificate. The State Registrar shall offer the registrant or the registrant's authorized representative notice and opportunity to be heard. If upon conclusion of the hearing no fraud or misrepresentation is found, copies may be issued. If upon conclusion of the hearing fraud or misrepresentation is found, the State Registrar shall remove the certificate from the file. The certificate and evidence shall be retained but shall not be subject to inspection or copying except upon order of a court of competent jurisdiction or by the State Registrar for purposes of administering the vital statistics program.

5.0 Birth Registration

(Authorization: Section 3121)

5.1 Out-of-Institution Birth - Documentary Evidence.

- 5.1.1 When a birth occurs in Delaware outside of a hospital or institution, and the birth certificate is filed before six months, additional evidence in support of the facts of birth may be required.
- 5.1.2 A certificate for the birth shall be completed and filed upon presentation of the following evidence by the individual responsible for filing the certificate:
 - 5.1.2.1 Evidence of pregnancy, such as but not limited to:
 - 5.1.2.1.1 Prenatal record, or
 - 5.1.2.1.2 a statement from a physician or other health care provider qualified to determine pregnancy, or
 - 5.1.2.1.3 a home visit by a public health nurse or other health care provider, or
 - 5.1.2.1.4 other evidence acceptable to the State Registrar.
 - 5.1.2.2 Evidence that the infant was born alive, such as but not limited to:
 - 5.1.2.2.1 A statement from the physician or other health care provider who saw or examined the infant, or
 - 5.1.2.2.2 an observation of the infant during a home visit by a public health nurse, or
 - 5.1.2.2.3 other evidence acceptable to the State Registrar.
 - 5.1.2.3 Evidence of the mother's presence in this state on the date of the birth, such as but not limited to:
 - 5.1.2.3.1 If the birth occurred in the mother's residence,
 - 5.1.2.3.1.1 A driver's license, or a state-issued identification card, which includes the mother's current residence on the face of the license/card, or
 - 5.1.2.3.1.2 a rent receipt that includes the mother's name and address, or
 - 5.1.2.3.1.3 any type of utility, telephone, or other bill that includes the mother's name and address, or
 - 5.1.2.3.1.4 other evidence acceptable to the State Registrar.
 - 5.1.2.3.2 If the birth occurred outside of the mother's place of residence, and the mother is a resident of Delaware, such evidence shall consist of:
 - 5.1.2.3.2.1 An affidavit from the tenant of the premises where the birth occurred, that the mother was present on those premises at the time of the birth, and

- 5.1.2.3.2.2 evidence of the affiant's residence similar to that required in ~~sub~~Section 502-5.1.2.3.1 of this regulation, and
 - 5.1.2.3.2.3 evidence of the mother's residence in Delaware similar to that required in ~~sub~~Section 502-5.1.2.3.2.1 of this regulation, or
 - 5.1.2.3.2.4 Other evidence acceptable to the State Registrar.
- 5.1.2.3.3 If the mother is not a resident of Delaware, such evidence must consist of clear and convincing evidence acceptable to the State Registrar.

5.2 Determination of Mother.

- 5.2.1 For the purposes of birth registration, the mother is deemed to be the woman who gives birth to the child, unless otherwise provided by state law or determined by a court of competent jurisdiction prior to the filing of the birth certificate.

6.0 Infants of Unknown Parentage; Foundling Registration

(Authorization: Section 3122)

- 6.1 The report for an infant of unknown parentage shall be registered on a current certificate of live birth and shall:
 - 6.1.1 Have "foundling" plainly marked in the top margin of the certificate;
 - 6.1.2 show the required facts as determined by approximation and have parentage data left blank;
 - 6.1.3 show the name and title of the custodian in lieu of the attendant.
- 6.2 If a report of a foundling is later placed in a special file as provided by Section 3122(d) of the **Delaware Code**, the State Registrar may inspect such information for purposes of properly administering the vital statistics program or as otherwise provided by state law.

7.0 Death Registration

(Authorization: Section 3123)

- 7.1 Acceptance of Death Certificate with Incomplete Personal Information.
 - 7.1.1 If all the personal information necessary to complete a certificate of death is not available within the time prescribed for filing of the certificate, the funeral director or person acting as such, shall file the certificate with all information that is available and satisfactorily account for all the items that are omitted.
 - 7.1.2 A supplemental report providing the personal information omitted from the original certificate shall be filed by the funeral director or person acting as such with the State Registrar as soon as possible, but in all cases within 30 days of the date the death occurred.
 - 7.1.3 The supplemental report shall be used to revise the existing certificate of death; and the certificate of death shall be marked "Revised".
- 7.2 Replacement of Pending Certificate
 - 7.2.1 When a pending certificate of death is filed pursuant to Section 3123(e), a revised certificate of death providing the medical information omitted from the original certificate shall be completed by the certifier within thirty days of the date the death occurred, or within sixty days if an extension has been applied for through the State Registrar. The revised certificate shall be forwarded to the funeral director or person acting as such. The funeral director will complete all the personal information and file the revised certificate of death with the Office of Vital Statistics. The revised certificate of death shall replace the pending certificate of death and shall be considered the original. Such certificate shall not be marked "Revised".
- 7.3 Hospital or Institution May Assist in Preparation of Certificate. When a death occurs in a hospital or other institution and the death is not under the jurisdiction of the medical examiner, the person in charge of such institution, or his or her designated representative, may initiate the preparation of the certificate of death as follows:
 - ~~7.3.4~~
 - ~~7.3.4.1~~ 7.3.1 Place the full name of the decedent and the date, time, and place of death on the certificate of death and obtain the medical certification of cause of death from the attending physician or;
 - ~~7.3.4.2~~ 7.3.2 Place the full name of the decedent and the date, time, and place of death on the certificate of death and obtain the pronouncing physician's attestation.
 - 7.3.23 Present the partially completed certificate of death to the funeral director or person acting as such.

8.0 Adoption

(Authorization: Section 3126)

- 8.1 Certificates.

- 8.1.1 Whenever an adoption decree is amended or annulled, the clerk of the court shall prepare a report thereof. This report shall include such facts as are necessary to identify the original certificate of adoption and the facts amended in the adoption decree as shall be necessary to properly amend the birth record.
- 8.1.2 When the State Registrar shall receive a certificate of adoption, report of annulment of adoption, or amendment of a decree of adoption for a person born outside Delaware, he or she shall forward such certificate or report to the State Registrar in the state of birth.
- 8.2 **New Certificate.**
 - 8.2.1 The new certificate of birth prepared after adoption shall be on the form in use at the time of its preparation and shall include the following items and such other information necessary to complete the certificate:
 - 8.2.1.1 The name of the child;
 - 8.2.1.2 the date and city and/or county of birth as transcribed from the original certificate;
 - 8.2.1.3 the names and personal particulars of the adoptive parents;
 - 8.2.1.4 the name of the attendant, printed or typed;
 - 8.2.1.5 the State File number assigned to the original certificate of birth;
 - 8.2.1.6 the original filing date
 - 8.2.2 The information necessary to locate the existing certificate and to complete the new certificate shall be submitted to the State Registrar on forms prescribed or approved by him or her.
- 8.3 Existing Certificate to Be Placed in a Special File. After preparation of the new certificate, the existing certificate and the evidence upon which the new certificate was based shall be placed in a special file. Such file shall not be subject to inspection except upon order of a court of competent jurisdiction or by the State Registrar for purposes of properly administering the vital statistics program or as otherwise provided by state law.

9.0 Acknowledgement or Establishment of Paternity

(Authorization: Section 3127)

- 9.1 The new certificate of birth prepared after acknowledgement or establishment of paternity shall be on the form in use at the time of its preparation and shall include the following items and such other information necessary to complete the certificate:
 - 9.1.1 The name of the child;
 - 9.1.2 the date and city and/or county of birth as transcribed from the original certificate;
 - 9.1.3 the names and personal particulars of the natural parents;
 - 9.1.4 the name of the attendant, printed or typed;
 - 9.1.5 the State File number assigned to the original certificate of birth;
 - 9.1.6 the original filing date.
- 9.2 The information necessary to locate the existing certificate and to complete the new certificate shall be submitted to the State Registrar on forms prescribed or approved by him or her.

10.0 Amendment of Vital Records

(Authorization: Section 3131)

- 10.1 Amendment of Minor Errors on Birth Certificates During the First Year. Amendment of obvious errors, transposition of letters in words of common knowledge, or obvious omissions may be made by the State Registrar within the first year after the date of birth either upon his or her own observation or query or upon request of a person as defined in ~~subs~~Section 10.3. When such additions or minor amendments are made by the State Registrar, a notation as to the source of the information, together with the date the change was made and the initials of the authorized agent making the change shall be made on the certificate in such a way as not to become a part of any certified copy issued. The certificate shall not be marked "Amended."
- 10.2 All Other Amendments. Unless otherwise provided in these regulations or in the statute, all other amendments to vital records shall be supported by:
 - 10.2.1 An affidavit setting forth:
 - 10.2.1.1 Information to identify the certificate;
 - 10.2.1.2 the incorrect data as it is listed on the certificate;
 - 10.2.1.3 the correct data as it should appear; and

- 10.2.2 One or more items of documentary evidence which support the alleged facts and which were established at least five years prior to the date of application for amendment or within seven years of the date of the event.
- 10.2.3 The State Registrar shall evaluate the evidence submitted in support of any amendment, and when he or she finds reason to doubt its validity or adequacy, the amendment may be rejected and the applicant advised of the reasons for this action.
- 10.3 Who May Apply.
- 10.3.1 To amend a certificate of birth, application may be made by one of the parents, if the registrant is under age 18; the guardian, the registrant if 18 years of age or over; or the individual responsible for filing the certificate.
- 10.3.2 To amend a certificate of death, application may be made by the next of kin, the informant listed on the certificate of death, or the funeral director or person acting as such who submitted the certificate of death. Applications to amend the medical certification of cause of death may be made only by the physician who provided the medical certification or the medical examiner.
- 10.3.3 To amend a certificate of marriage, application must be made jointly by both parties to the marriage or by the survivor. In the event the marriage to which the application relates was terminated by divorce or annulment on or before the date of application for amendment, the applicant may request amendment only of those items on the certificate of marriage which relate to the applicant.
- 10.4 Amendment of Registrant's Given Names on Certificates of Birth Within the First Year.
- 10.4.1 Until the registrant's first birthday, given names may be amended upon receipt of an affidavit signed by the parent(s) named on the certificate or the guardian, person, or agency having legal custody of the registrant.
- 10.4.2 After one year from the date of birth the provisions of Regulation subsection 10.2 must be followed to amend a given name if the name was entered incorrectly on the certificate of birth. A legal change of name order must be submitted from a court of competent jurisdiction to change a given name after one year.
- 10.5 Addition of Given Names on Certificates of Birth.
- 10.5.1 Until the registrant's seventh birthday, given names, for a child whose birth was recorded without given names, may be added to the certificate upon receipt of an affidavit signed by the parent(s) named on the certificate or the guardian, person, or agency having legal custody of the registrant.
- 10.5.2 After seven years the provisions of Regulation subsection 10.2 must be followed to add a given name.
- 10.6 Legal Change of Name. Upon receipt of a certified copy of an order of a court of competent jurisdiction changing the name of a person born in Delaware and upon request of such person or his or her parents, guardian, or legal representative, the State Registrar shall amend the certificate of birth to show the new name.
- 10.7 Amendment of Sex.
- 10.7.1 The Registrar shall establish a new certificate of birth that reflects the new sex upon receipt of the following documents:
- 10.7.1.1 An affidavit requesting a new certificate of birth with a sex that differs from the sex listed on the original certificate of birth of the registrant, or if the registrant is a minor, the registrant's parent, guardian, or legal representative; and
- 10.7.1.2 An affidavit signed by a licensed medical or mental health professional, licensed by a US jurisdiction in a relevant discipline, who has treated or evaluated the registrant, including license number and name of issuing jurisdiction of the professional stating that:
- 10.7.1.2.1 The registrant has undergone surgical, hormonal, psychological or other treatment appropriate for the individual for the purpose of gender transition, based on contemporary medical standards; or
- 10.7.1.2.2 The registrant has an intersex condition, and that in the provider's professional opinion, the individual's sex as listed on the original birth certificate should be changed.
- 10.7.2 If a change of name listed on the certificate is also being requested, the requirements listed in subsection 10.6 must be met.
- 10.7.3 The item numbers of the entries that were amended shall not be identified on the new certificate or on any certified copies that may be issued of that certificate.
- 10.7.4 Subsequent changes to sex on a registrant's birth certificate will be made in accordance with subsection 10.9 of these regulations.
- 10.78 Amendment of Cause of Death. The cause of death may be amended only upon receipt of a signed statement or an approved electronic notification from the physician or medical examiner who originally certified the cause of death. In the absence or inability of the physician or with his or her approval the cause of death may be

amended upon receipt of a signed statement or an approved electronic notification from his or her associate physician, or the chief medical officer of the institution in which death occurred, or a medical examiner who assumes jurisdiction of the case provided such individual has access to the medical history of the case. The State Registrar may require documentary evidence to substantiate the requested amendment.

10.89 Amendment of the Same Item More than Once. Once an amendment of an item is made on a vital record, that item shall not be amended again except upon receipt of a court order from a court of competent jurisdiction.

10.910 Methods of Amending Certificates. Certificates of birth, death, and marriage may be amended by the State Registrar in the following manner:

10.910.1 Completing the item in any case where the item was left blank on the existing certificate.

10.910.2 Drawing a single line through the item to be amended and inserting the correct data immediately above or to the side thereof. The line drawn through the original entry shall not obliterate such entry.

10.910.3 Amending a record maintained in an electronic file by changing the item(s) to be amended. The date of the amendment must be made part of the record and the original information must also be retained.

~~10.9.4 Upon receipt of a certified copy of an order of a court of competent jurisdiction indicating the sex of an individual born in Delaware has been changed by surgical procedure and whether such individual's name has been changed, the certificate of birth of such individual shall be amended by preparing a new certificate. The item numbers of the entries that were amended shall not, however, be identified on the new certificate or on any certified copies that may be issued of that certificate.~~

10.101 Denial of Amendment. When an applicant does not submit the minimum documentation required for amending a vital record or when the State Registrar has cause to question the validity or adequacy of the applicant's sworn statements or the documentary evidence, and if the deficiencies are not corrected, the State Registrar shall not amend the vital record and shall advise the applicant of the reason for this action and shall further advise the applicant of the right of appeal to a court of competent jurisdiction.

10.142 Notification of Amendment.

10.142.1 When a certificate or report is amended under this section by the State Registrar, the State Registrar shall report the amendment to any other custodian of the vital record and their record shall be amended accordingly.

10.142.2 When an amendment is made to a certificate of marriage by the local official issuing the marriage license, copies of such amendment shall be forwarded to the State Registrar.

11.0 Delayed Registration of Birth

(Authorization: Section 3131)

11.1 Delayed Certificate of Birth Form. All certificates registered six months or more after the date of birth are to be registered on a delayed certificate of birth form prescribed and furnished by the State Registrar.

11.2 Who May Request the Registration of a Delayed Certificate of Birth.

11.2.1 Any person born in Delaware whose birth is not recorded in the state, his/her parent or guardian, or any other person age 18 or older acting for the registrant and having personal knowledge of the facts of birth may request the registration of a delayed certificate of birth, subject to these regulations and instructions issued by the State Registrar.

11.2.2 Each application for a delayed certificate of birth shall be signed and sworn to before an official authorized to administer oaths by the person whose birth is to be registered if such person is 18 years of age or over and is competent to sign and swear to the accuracy of the facts stated therein; otherwise the application shall be signed and sworn to by one of the parents of the registrant, his/her guardian, or any other person age 18 or older having personal knowledge of the facts of birth.

11.3 Facts to be Established for a Delayed Registration of Birth. The minimum facts which must be established by documentary evidence shall be the following:

11.3.1 The full name of the person at the time of birth;

11.3.2 the date of birth and state of birth;

11.3.3 the full maiden name of the mother;

11.3.4 the full name of the father; except that if the mother was not married either at the time of conception or birth the name of the father shall not be entered on the delayed certificate except as provided in ~~sub~~Section 11.4.

11.4 Delayed Registration Following a Legal Change of Status. When evidence is presented reflecting a legal change of status by adoption, legitimation, or acknowledgment of paternity, a new delayed certificate may be established to reflect such change. The existing certificate and the evidence upon which the new certificate was based shall be placed in a special file. Such file shall not be subject to inspection except upon order of a

court of competent jurisdiction or by the State Registrar for purposes of properly administering the vital statistics program.

11.5 Documentary Evidence - Requirements.

11.5.1 To be acceptable for filing, the name of the registrant at the time of the birth and the date and place of birth entered on a delayed certificate of birth shall be supported by at least:

11.5.1.1 A hospital record created at the time of birth, or two pieces of acceptable documentary evidence, if the record is filed within ten years after the date of birth; or

11.5.1.2 three pieces of acceptable documentary evidence, if the record is filed ten years or more after the date of birth.

11.5.2 Facts of parentage shall be supported by at least one document.

11.6 Documentary Evidence - Acceptability. The State Registrar shall determine the acceptability of all documentary evidence submitted.

11.6.1 Documents presented, including but not limited to census, hospital, church, and school records, must be from independent sources and shall be in the form of the original record or a duly certified copy thereof or a signed statement from the custodian of the record or document. Affidavits of personal knowledge are not acceptable as evidence to establish a delayed certificate of birth.

11.6.2 All documents submitted in evidence:

11.6.2.1 For persons aged ten or older, must have been established at least ten years prior to the date of application, or within three years of the date of birth;

11.6.2.2 for persons under ten, must be dated at least one year prior to the date of application or within the first year of life.

11.7 Abstraction of Documentary Evidence.

11.7.1 The State Registrar, or his or her designated representative, shall abstract on the delayed certificate of birth a description of each document submitted to support the facts shown on the delayed birth certificate. This description shall include:

11.7.1.1 The title or description of the document;

11.7.1.2 the name and address of the custodian.

11.7.1.3 the date of the original filing of the document being abstracted;

11.7.1.4 all birth facts required by ~~sub~~Section 11.3 contained in each document accepted as evidence.

11.7.2 All documents submitted in support of the delayed birth registration shall be returned to the applicant after review.

11.8 Verification by the State Registrar. The State Registrar, or his or her designated representative shall verify:

11.8.1 That no prior birth certificate is on file for the person whose birth is to be recorded;

11.8.2 That he or she has reviewed the evidence submitted to establish the facts of birth;

11.8.3 That the abstract of the evidence appearing on the delayed certificate of birth accurately reflects the nature and content of the document.

11.9 Dismissal After One Year. Applications for delayed certificates which have not been completed within one year from the date of application may be dismissed at the discretion of the State Registrar. Upon dismissal, the State Registrar shall so advise the applicant and all documents submitted in support of such registration shall be returned to the applicant.

11.10 Delayed Registration for the Deceased. No delayed certificate of birth shall be registered for a deceased person.

11.11 Denial of Registration. When an applicant does not submit the minimum documentation required for delayed registration or when the State Registrar has cause to question the validity or adequacy of the applicant's sworn statement or the documentary evidence, and if the deficiencies are not corrected, the State Registrar shall not register the delayed certificate of birth and shall advise the applicant of the reasons for this action, and shall further advise the applicant of his or her right to seek an order from a court of competent jurisdiction.

12.0 Delayed Registration of Death

(Authorization: Section 3131)

12.1 The registration of a death after the time prescribed by statute and regulations shall be registered on the current certificate of death form in the manner prescribed below:

12.1.1 If the attending physician or medical examiner at the time of death and the attending funeral director or person who acted as such are available to complete the certificate of death, it may be completed without additional evidence and filed with the State Registrar. For those certificates filed six months or more after

the date of death, the physician or medical examiner and the funeral director or person who acted as such must state in accompanying affidavits that the information on the certificate is based on records kept in their files.

12.1.2 In the absence of the attending physician or medical examiner and the funeral director or person who acted as such, the certificate may be filed by the next of kin of the decedent and shall be accompanied by two documents which identify the decedent and his or her date and place of death.

12.2 In all cases, the State Registrar may require additional documentary evidence to prove the facts of death.

12.3 A summary statement of the evidence submitted in support of the delayed registration shall be endorsed on the certificate.

13.0 Delayed Registration of Marriage

(Authorization: Section 3131)

13.1 The registration of a marriage after the time prescribed by statute shall be made on the current certificate of marriage form in the manner prescribed below:

13.1.1 The certificate must be filed with the Clerk of the Peace where the marriage license was originally issued.

13.1.2 To be acceptable for registration by the State Registrar the delayed certificate of marriage must be supported by:

13.1.2.1 A copy of the license or of the application for license if the license was granted, and

13.1.2.2 A signed statement from the officiant or the custodian of the records of the officiant and from one witness to the wedding ceremony indicating that a marriage ceremony was performed and the date and place of the marriage.

13.1.2.3 In all cases, the State Registrar may require additional documentary evidence to prove the facts of marriage.

13.1.2.4 When an applicant does not submit the minimum documentation required for delayed registration or when the State Registrar has cause to question the validity or adequacy of the statements or the documentary evidence, and if the deficiencies are not corrected, the State Registrar shall not register the delayed certificate of marriage and shall advise the applicant of the reasons for this action, and shall further advise the applicant of his or her right to seek an order from a court of competent jurisdiction.

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