



Virginia
Regulatory
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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Department of Health
Virginia Administrative Code (VAC) citation	<u>12 VAC5-550</u>
Regulation title	12VAC5-550-330. New certificate
Action title	To create a Certificate of Live Birth form and a Certified Birth Certificate that shows the parents designation as "Name of Parent".
Date this document prepared	June 22, 2006

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

On April 22, 2005, the Virginia Supreme Court in a case styled *Davenport v. Little-Bowser*, 269 Va. 546, held that the plain language of Virginia Code § 32.1-261 required the Health Department's Division of Vital Records to issue new birth certificates for Virginia-born children adopted by out-of-state same sex couples. Because the Supreme Court did not invalidate the Health Department's current regulations regarding issuance of birth certificates, the Attorney General's Office has advised the Registrar to continue issuing birth certificates with one same-sex partner's name in the space reserved for "Mother" and the other partner's name in the space reserved for "Father" until such time as the current regulation may be amended. Adoptive same-sex parents have indicated a dissatisfaction with the certificates as currently issued and as a result, the Division of Vital Records is forwarding a draft NOIRA seeking to promulgate regulations changing the birth certificate form to permit the parents designation to be "Name of Parent" for a child that is adopted by a same-sex couple rather than "Mother" and "Father."

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Sections 32.1-12 and 32.1-250 of the Code of Virginia authorize the Board of Health to promulgate procedural rules for the conduct of activities for the Division of Vital Records and to promulgate regulations.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The Virginia Supreme Court decision was based on statutory grounds and did not address either constitutional issues or existing regulations. The Division of Vital Records has met the legal requirements in the preparation and issuance of the birth certificate for children adopted by out-of-state parents of the same sex. Currently the birth certificate issued shows the parent's designation as "Full Maiden Name of Mother" and "Full Name of Father", which shows one the parents gender incorrect.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

The existing regulation will be amended to include language such as "In cases where a child has been adopted out-of-state by a same sex couple the new birth certificate will be created on a form and the certification will be issued showing the parents designation as Name of Parent".

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

There are no alternatives because the current Regulation requires the new birth certificate be created on the form used at the time of the child's birth. That form shows the parent's designation as "Full Maiden Name of Mother" and Full Name of Father".

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax to: **Janet Rainey, Division of Vital Records, P. O. Box 1000, Richmond, VA 23218, Telephone number (804) 662-6245, Fax number (804) 662-6256, email address janet.rainey@vdh.virginia.gov**. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

INSERT THE FOLLOWING IF THIS ACTION WILL ALSO BE A PERIODIC REVIEW OF THIS REGULATION (pursuant to COV § 2.2-4017/Executive Order):

In addition, the agency is seeking information on (1) the continued need for the regulation; (2) the complexity of the regulation; (3) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (4) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.}

A public hearing will not be held.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

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Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This proposed regulation will probably have opposition from the groups that opposed the Virginia Supreme Court ruling and the patron and supporters of SB414 that failed in the 2006 General Assembly. It will probably have support from groups such as The Family Foundation and Equality Virginia.