



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Department of Health (Board of Health)
Virginia Administrative Code (VAC) citation	12 VAC5-550
Regulation title	Regulations Governing Vital Records
Action title	Proposed Amendments to Vital Records Regulations Based on Periodic Review
Date this document prepared	March 28, 2013

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) 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.

To fulfill the statutory mandate to review regulations and to protect the citizens of the Commonwealth, the Virginia Department of Health conducted a periodic review of 12 VAC 5-550 *et seq.* "Regulations Governing Vital Records" pursuant to Executive Order (EO) 14 (2010). As a result of this review, the Virginia Department of Health plans to begin the regulatory process to amend these regulations. The purpose of the intended amendments is to identify correct statutory authority, improve clarity of language and to add necessary sections, such as regulations governing birth certificates created under the authority established in § 63.2-1200.1(B) of the Code of Virginia for foreign born children, and adding the requirements for amending or correcting birth and death certificates.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

The regulation is promulgated under the authority of §32.1-12 and §32.17-250 of Chapter 7 of Title 32.1 of the Code of Virginia. Section 32.1-12 grants the Board of Health the legal authority to make, adopt, promulgate, and enforce such regulations necessary to carry out the provisions of Title 32.1 of the Code and other laws of the Commonwealth administered by it. Section 32.1-250 of the Code of Virginia requires the Board of Health to install, maintain and operate the only system of vital records throughout this Commonwealth.

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 Department of Health conducted a periodic review of the Regulations Governing Vital Records. Although there were no public comments received during the periodic review, it was determined that some regulations needed clarification, others that did not conform to Code needed correction and specific regulations needed to be added. These proposed amendments will make the regulations more comprehensible to affected entities and the public while at the same time protecting the integrity of the vital record system.

Substance

Please detail any changes that will be proposed. Be sure to define all acronyms. 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 proposed amendments are necessary for the clarification, addition or enhancements to the regulations that include:

1. The correct statutory authority;
2. Adding the definition of a certified nurse midwife and a certified professional midwife;
3. The correct fee for a certified vital record (births, deaths, marriages and divorces);
4. Adding a regulatory section for creating a birth certificate for a foreign born child adopted in a foreign country to citizens of the Commonwealth based on §63.2-1200.1 of the Code of Virginia;
5. Correcting the regulation in regards to requirements needed to amend the birth certificate of a person who has had a medical procedure to change their gender;
6. Clarification regarding the requirements for amending or correcting a birth or death certificate;
7. Clarifications regarding the issuance of certified vital records (births, deaths, marriages and divorces);
8. Adding the Surrogate Consent and Report Form to the list of forms issued by the State Registrar and;
9. Clarification on matters such as physicians signing death certificates with dark blue ink and the data to appear on a vital record.

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.

The Regulations Governing Vital Records are mandated by law. There are no other viable alternatives other than the proposed amendments to the current regulations to increase the accuracy and clarity of the regulations, while also continuing to fulfill the Board's statutory mandate.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including 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.

Please also indicate, pursuant to your Public Participation Guidelines, whether a Regulatory Advisory Panel or a Negotiated Rulemaking Panel will be used in the development of the proposed regulation. Please state one of the following: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is _____; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.

The agency is seeking comments on this regulatory action, including but not limited to 1) ideas to be considered in the development of this 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) the probable effect of the regulation on affected small businesses, and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to **Janet Rainey, Director of the Division of Vital Records and State Registrar, Post Office Box 1000, Richmond, VA 23220, Telephone number: (804) 662-6200, Fax number: (804) 662-6256, Email: 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 midnight on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action. A panel will not be appointed to assist in the development of the proposed regulations.

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.

There is no direct impact on the family.

Periodic review/small business impact review result

If this NOIRA is not the result of a periodic review/small business impact review of the regulation, please delete this entire section.

If this NOIRA is the result of a periodic review/small business impact review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, please include, pursuant to Code of Virginia § 2.2-4007.1 E and F, a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) 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.

No comments were received from the public during the recent periodic review. There is a continued need for the regulation as it is mandated by law. The Department has not received any complaints or comments concerning the regulation from the public. With the proposed amendments the regulation shall be clearly written and easily understandable and the Department is confident based on this most recent review that the regulation does not overlap, duplicate or conflict with federal or state law or regulation.