

Proposed Amendments to the Regulations *Governing Vital Records*
Statement of Basis, Purpose, Substance, and Issues

Basis.

Sections 32.1-12 and 32.1-250 of the **Code** authorizes the Board of Health to promulgate procedural rules for the conduct of activities for vital records and health statistics system and to promulgate regulations. The Board has the responsibility to promulgate, amend, and repeal, as appropriate, regulations necessary to implement the vital records and health statistics system, and to collect, catalog, and evaluate information reported to it. The scope of this mandate is appropriate for the adequate and effective administration of the vital records and health statistics division and for the program necessary to operate it.

Purpose.

The purpose of the regulations, and the intended amendments, is to ensure the uniform and efficient administration of the system of vital records through the establishment and enforcement of regulations setting the minimum standards for completing and filing vital records, in compliance with state and federal laws. The purpose of the regulations cannot be served adequately without a reliable and efficient system in which good and permanent vital record files are acquired and preserved for safekeeping and current health statistics are effectively reported.

Most of the **Regulations Governing Vital Records** have not been amended since they were promulgated in 1950. The content of the regulations needs updating to reflect current societal practices, to improve clarity of language in specific sections, and to add other requirements, such as in the reporting of deaths, the registration of delayed birth registrations and the evidence needed for home births. These amendments would make the regulations easier to comprehend by the affected entities and the public while at the same time would make it more difficult for fraud to occur.

Moreover, additional provisions need to be amended and added in light of current changes in reporting methodology and technology. For example, added provisions would allow for the electronic reporting of birth data directly from the hospitals to the State Registrar as allowed by the **Code** as amended in 1994. By electronic reporting, the entire birth registration process is more accurate and much faster, and thus, for example, health data relating to infants at birth becomes available in a more timely way for appropriate public response to such matters as serious congenital anomalies.

Substance.

The proposed amendments are necessary to recognize the growing number of home births that are not registered by attendants at delivery and to assist in defining the kinds of evidence necessary to establish the required registration information, as well to update certain terms and provisions as a result of state or federal law. Additions or enhancements to the regulations include:

1. Clarification for filing a late or delayed birth record;
2. Clarification on matters such as primary and secondary evidence required to place a delayed birth on file, who is eligible to receive birth and death records, and additions to the definition section to adequately reflect terms currently used in the industry for example, funeral service licensee instead of, funeral director.
3. Incorporation of mandated requirements by statute. Sections 32.1-263B, 32.1-267B and 32.1- 268A, require social security numbers or control numbers issued by the Department of Motor Vehicles to be included in the data collected on death, marriage and divorce records. In compliance with the Taxpayer Relief Act of 1997 (PL 105-34), the Social Security Administration (SSA) is required to obtain parents' social security numbers on original social security number cards for individuals who have not attained age 18 and share this information with the Internal Revenue Service (IRS). Parents may request social security cards for their newborn(s), by participating in the Enumeration At Birth program (EAB). Under this program parents sign the birth record requesting that vital records submit required data to SSA and the social security card is sent directly to the parent. This program requires that social security number of parent (s) be submitted to SSA when social security cards are requested.

Issues.

The primary advantage of these amendments is that it clarifies for citizens the requirements for filing a home birth, late or delayed birth record. Conflicting language has been removed and clearer language was substituted when indicated.

These regulations contain procedural rules for the registration and reporting of vital events including birth, death, fetal death, marriage, divorce and adoption and any changes to a vital record. They spell out the rules for detailing standards and requirements for collecting and reporting vital event information.

Regulations Governing Vital Records
Statements of Basis, Purpose, Substance and Issues
Page 3

Aspects of the regulations affect about 100 hospitals, 480 funeral homes, 35 local health departments and their corresponding districts, four medical examiner district offices, numerous city and county clerks' offices and the citizens of the Commonwealth.

The affected organizations and individuals reviewed these regulations under Executive Order 15 (94) discussed potential alternatives to the regulations to determine if less burdensome alternatives might exist. As the information contained in the vital records is both sensitive and confidential, the advisory committee did not find the requirements for the administration of the system overly burdensome. No known alternatives exist that would better protect the public in this regard.

There are no known disadvantages to the public, private persons, the agency or the Commonwealth presented by these proposed regulations.

Proposed Amendments to the Regulations Governing Vital Records
Summary of Proposed Amendments

The State Board of Health has proposed these amendments to comply with the statutory changes to Section 32.1- 263A, 32.1-267B, 32.1- 268A of the **Code** and The Taxpayer Relief Act of 1997 (PL 105-34). The purpose of the regulations, and the intended amendments, is to ensure the efficient administration of the system of vital records through the establishment of regulations setting the minimum standards for completing and filing vital records, in compliance and federal laws. The proposed regulations will: clarify the requirements for filing a late or delayed birth record; clarify what is determined to be primary and secondary evidence to place a delayed or late birth on file, incorporate mandated requirements by statute; correct terminology that is out dated; allow for the electric filing of birth records; and incorporate regulations to address the registration of home births. The regulations specify the responsibilities of reporting sources such as physicians, nurse midwives funeral service licensees and other health professionals.

Proposed Amendments to the Regulations *Governing Vital Records*
Statement of Legal Authority to Promulgate

The existing **Regulations Governing Vital Records** were promulgated under the authority of Chapter 7, Title 32.1 (sections 32.1- 249 through 32.1- 275.1) of the *Code of Virginia* establishing the vital records and health statistics system in the Commonwealth.

Sections 32.1-12 and 32.1- 250 of the Code authorizes the Board of Health to promulgate procedural rules for the conduct of activities for vital records and health statistics. The Board has the responsibility to promulgate, amend, and repeal as appropriate, regulations as necessary to implement the vital records and health statistics system, and to collect, catalog, and evaluate information reported to it. The scope of this mandate is appropriate for the adequate and effective administration of the vital records and health statistics division and for the program necessary to operate it.

**Proposed Amendments to the *Regulations Governing Vital Records*
Summary of Public Comments Received**

The Virginia Department of Health received several comments concerning the registration of home births. Many citizens were given misinformation from an unknown source indicating that the Department would not allow the registration of home births. Each email and written comments concerning home births were responded to with the correct information concerning the proposed amendments to the regulations. Mr. George C. Green, representing the Peninsula Families for Natural Birth and Health (a home birth advocate organization) was present during the regulatory review process. This organization was requesting clear and consistent guidelines for the registration of home births.

Representatives from the funeral service industry, Virginia Funeral Directors Association, Virginia Board of Funeral Directors and Embalmers, local health department, Regulatory Support Services and one private citizen.

The majority of comments centered on requests for clarity of language in the regulations and updating language contained in the regulations to commonly used terminology.

**Proposed Amendments to the *Regulations Governing Vital Records*
Statement Detailing Changes**

Definitions, 12 VAC 550-05

Addition of definitions board, Commissioner, Department, informant, primary evidence, midwife, registrant and secondary evidence.

12 VAC 5-550-70

Allows the State Registrar to use electronic media to issue forms and supplies for the registration of vital events.

12 VAC 5-550-90

Specifies that electronic media used for the filing of vital events must be approved by the State Registrar.

12 VAC 5- 550- 100

Addition of responsibilities, evidence and data elements required for the filing of home births. The birth is to be registered as soon as possible with the local health department in which the birth occurred.

12 VAC 5- 550- 110

Allows for the use of the control number issued by the Department of Motor Vehicles on a death record if the decedent has no social security number.

12 VAC 5- 550- 130

Requires that the marriage certificate contain the social security number or control number issued by the Department of Motor Vehicles for the bride and groom.

12 VAC 5- 550- 140

Requires that the report of divorce or annulment contain the social security number or control number issued by the Department of Motor Vehicles of both the husband and wife.

Regulations Governing Vital Records
Statement Detailing Changes
Page 2

12 VAC 5- 550- 190

Allows for the use of approved electronic media for maintaining records and eliminates unnecessary data elements for collection.

12 VAC 5- 550- 200

Changes reporting times from the 5th and 20th day of each month to the 5th day of the month for reporting events by special registrars. City and county registrars will transmit reports weekly instead of the 10th and 25th day of the month.

12 VAC 5- 550- 240

Adds that a deceased person cannot have a delayed birth record placed on file. Specifies that applications for a delayed birth record not completed within one year will be dismissed and evidence returned to the applicant.

12 VAC 5- 550- 260

Clarifies what is acceptable as primary evidence when requesting a delayed birth registration.

12 VAC 5- 550- 280

Specifies the conditions for which new birth certificates are established after adoption, legitimization, Acknowledgement of paternity, or court determination of paternity and change of sex.

12 VAC 5- 550- 290

Changes the word natural to biological and refers to Code §20- 49.8 for the change. Adds a timeframe and condition when a mother may not sign an acknowledgement of paternity.

Proposed Amendments to the Regulations Governing Vital Records
Statement Detailing Changes

Page 3

12 VAC 5-550- 300

Specifies the timeframe of 10 months at the time of the birth or preceding the birth when a mother can sign an affidavit of paternity.

12 VAC 5- 550- 310

Adds the requirement of both parents signatures to change a surname and conditions not requiring both parents signatures in court determined paternity.

12 VAC 5- 550- 320

Establishes the evidence required prior to changing the sex on a birth record.

12 VAC 5- 550- 330

Allows for a change of sex to be made when creating a new birth certificate.

12 VAC 5- 550- 350

Eliminates confusing language and uses the term funeral service licensee replacing the word funeral director, which has been changed by the regulations governing funeral services.

12 VAC 5-500- 400

Provides instructions for preparing out of state transit permits.

12 VAC 5- 500- 450

Specifies where census data used as evidence for a delayed birth can be obtained and changes the five-year requirement to eight years.

12 VAC 5- 500- 470

Clarifies who is eligible to obtain birth and death records.

12 VAC 5- 500- 520

Allows for administrative costs to be charged when documents are amended at the customer's request or a delayed birth registration is requested. A recent survey of all states (see attached) indicated all but seven states including Virginia charged an administrative fee to amend vital record documents. The states that currently do not charge for amendments to vital records are examining the need for adding administrative fees to amending their states vital records. VDH- Vital Records receives limited general funding and relies on fees collected for the issuance of a vital record. The average fee for all states that charge an administrative fee is \$10.00 and that is the recommended fee for amendments to a vital record.

There will be no administrative fee charged for amendments/corrections to a vital record within the first year of the event. Parents of newborns are instructed to request the birth record of their child within the first six- (6) months of the birth to review the record for accuracy. Attached are charts outlining the actual numbers of corrections, amendments, delayed birth records placed on file etc. for calendar years 1998 and 1999 completed in the Special Services Unit. These corrections, amendments, and delayed births are for those vital events that are greater than one year old. The estimated additional revenue is \$ 173,210 based on 1999 data.

**Proposed Amendments to the *Regulations Governing Vital Records*
Statement Describing Reasoning for Concluding Regulation is Essential**

The purpose of the regulation, and the proposed amendments, is to ensure the uniform and efficient administration of the system of vital records. These regulations and amendments contain procedural rules for the registration and reporting of vital events including birth, death, fetal death, marriage divorce and adoption and any changes to a vital record. They spell out the rules for detailing standards and requirements for collecting and reporting vital event information. Aspects of the regulations affect about 100 hospitals, 480 funeral homes, 35 local health departments and their corresponding districts, four medical examiner district offices, numerous city and county clerks' offices and the citizens of the Commonwealth.

The protection of individual data from casual perusal is essential to the validity of the program as well as a desirable shield of sensitive personal information while providing health statistics for the protection of public health and society as a whole. The intended amendments are needed to guarantee further the protection of the citizens of the Commonwealth against unauthorized, unwarranted or indiscriminate disclosure and fraud.

**Proposed Amendments to the *Regulations Governing Vital Records*
Reporting forms that will be used in administering the regulations**

1. Certificate of Live Birth VS1
2. Certificate of Death VS2
3. Medical Examiners Certificate VS2A
4. Marriage Register VS3
5. Report of Divorce or Annulment VS4
6. Report of Spontaneous Fetal Death VS5
7. Report of Induced Termination of Pregnancy VS5A
8. Delayed Certificate of Birth VS12
9. Acknowledgement of Paternity VS22
10. Affidavit for correction of a record VS32

**Proposed Amendments to the *Regulations Governing Vital Records*
Statement Describing Reasoning for Concluding the Regulation Is Essential**

These regulations contain procedural rules for the registration and reporting of vital events including birth, death, fetal death, marriage, divorce and adoption and any changes to a vital record. They spell out the rules for detailing standards and requirements for collecting and reporting vital event information. Aspects of the regulations affect about 100 hospitals, 480 funeral homes and 35 local health departments and their corresponding districts, four medical examiner districts, numerous city and county clerk' offices and the citizens of the Commonwealth.

The protection of individual data from casual perusal is essential to the validity of the program as well as a desirable shield of sensitive information while providing health statistics for the protection of public health and society as a whole. The intended amendments are needed to guarantee further the protection of the citizens of the Commonwealth against unauthorized, unwarranted or indiscriminate disclosure and fraud.

**Proposed Amendments to the *Regulations Governing Vital Records*
Process by Which Less Burdensome and Intrusive Alternatives Considered**

The affected organizations and individuals that reviewed these regulations under Executive Order 15 (94) discussed potential alternatives to the regulations to determine whether less burdensome alternatives might exist. As the information contained in the vital records is both sensitive and confidential, the advisory committee did not find the requirements for the administration of the system overly burdensome. No known alternatives exist that would better protect the public in this regard.

**Proposed Amendments to the *Regulations Governing Vital Records*
Statement of Determination the Regulation is Clearly Written**

The affected organizations and individuals that reviewed these regulations under Executive Order 15 (94) have through examination have determined that these regulations are clearly written and easily understandable by the individuals and entities affected. The organizations which were represented are: the Virginia Funeral Directors Association, The Board of Funeral Directors and Embalmers, The Funeral Directors and Embalmers Association, Deputy Registrar (local health department), PENFAM (Families For Natural Births and Health), Regulatory Support Services Representative, vital record staff and one public citizen.

**Proposed Amendments to the *Regulations Governing Vital Records*
Schedule for Review and Reevaluation of the Regulation**

The Virginia Department of Health will initiate a review and reevaluation of the regulations by May 1, 2003 to determine if there should be any amendments to the regulations and determine the effectiveness of the proposed amendments to the regulations. The measurable goal is to determine if the regulations provide consistent guidance and standards for the administration of the system of vital records and health statistics.

**Proposed Amendments to the *Regulations Governing Vital Records*
Statement of Anticipated Regulatory Impact**

The proposed amendments to the Regulations Governing Vital Records will have minimal fiscal impact on the agency and regulated entities. Currently all birthing facilities in the Commonwealth have voluntarily complied with reporting births electronically to the State Registrar. The regulations officialize what is customary practice for reporting births. The Virginia Department of Health has made the statutory changes to the forms used by reporting sources for marriage, divorce and annulments. The proposed regulations do not require additional changes to currently utilized forms used by reporting sources.

Projected Costs to Virginia Department of Health

There are no anticipated additional costs to the Virginia Department of Health as a result of the proposed amended regulations.

Projected Costs to Reporting Sources

There are 69 hospitals with birthing facilities in the Commonwealth. All facilities have volunteered to report births electronically and there are no costs to reporting sources as a result of the proposed regulations.

Projected Cost to Citizens Requesting Amendments to Vital Records or Requesting to place a delayed birth on file.

A survey conducted by the Florida Department of Health and shared with National Association for Public Health Statistics and Information System (NAPHSIS), revealed that Virginia is one of the few states that does not recoup the administrative costs associated with amending a vital record or establishing a delayed birth record. This process is time consuming, labor intensive and requires additional work on staff processing these types of requests. Telephone calls and letters to reporting sources are frequently required to verify the authenticity of documents submitted as evidence. The average cost is \$16.00 for those states who process these types of requests. (See attached) It is proposed that the Virginia Department of Health establish administrative costs at \$10.00 for the service provided when processing requests to amend a vital record or requesting to place a delayed birth on file.

ATTACHMENT TO NOTICE OF INTENDED REGULATORY ACTION
REGARDING THE REGULATIONS
GOVERNING VITAL RECORDS, 12 VAC 5-550

BLOCK 4 (INSERT):

The purpose of the proposed action is to review the regulations and amend them so as to ensure the accurate, uniform, efficient, and confidential administration of the Commonwealth's system for maintaining vital records, such as birth, adoption, marriage, divorce, death, and fetal death records, and for allowing necessary changes to these records. Resulting amendments may: (I) provide for the electronic reporting of births; (II) allow delayed reporting of births when warranted; (III) specify information needed to evidence home births; and (IV) establish protections against the unauthorized, unwarranted, and indiscriminate disclosure of vital records. Resulting amendments may also address other issues relating to these regulations that the public, regulated persons, and health planning community deem appropriate to raise in response to this notice.

