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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Board of Health
Virginia Administrative Code (VAC) Chapter citation(s)	12VAC5-550
VAC Chapter title(s)	Regulations Governing Vital Records
Action title	Amend Regulations following Periodic Review (2023)
Date this document prepared	7/23/2024

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

The Regulations Governing Vital Records are promulgated to ensure the efficient and uniform administration of the system of vital records. The regulations facilitate the Commonwealth's system for vital event registration and health statistical services, and detail the responsibilities of the Board of Health, the State Registrar, the public, and public and private entities as related to the collection, maintenance, protection, and distribution of vital statistical data and information.

This regulatory action intends to (i) amend 12VAC5-550-270 to provide clarity to the processes associated with the State Registrar's rejection of delayed birth filings, (ii) amend 12VAC5-550-520 to increase, from \$10 to \$20, the fee assessed for delayed birth filing requests and amendments and corrections to certified vital records on file with the Virginia Department of Health (VDH), (iii) add a new regulatory section, 12VAC5-550-315, to specify requirements followed by applicants when filing requests to establish a new birth certificate for a registrant born in the Commonwealth via surrogacy, and (iv) update regulatory language conform to the *Form and Style Requirements* published by the Virginia

Register of Regulations. Additionally, opportunities for regulatory reduction will be considered where possible.

These amendments are expected to reduce the challenges faced by the public and entities in understanding the processes associated with the rejection of delayed birth filings and establishing new birth certificates for children born as a result of assisted conception to a surrogate. Fee increases are recommended as the fee amounts in 12VAC5-550-520 have not been adjusted since implementation in 2003.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

“VDH” means the Virginia Department of Health

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation, (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

The Office of Vital Records completed a periodic review of 12VAC5-550 in 2023, and results were posted to Virginia Regulatory Town Hall on October 30, 2023. The periodic review resulted in a decision to amend the Regulations Governing Vital Records, to include amendments to; (i) improve consistency within the chapter, (ii) incorporate statutory requirements, (iii) update language to provide clarity, and (iv) align with the current use of electronic technologies in the purview of vital records. The periodic review results also note the consideration of a fee increase for certain services provided by the Office of Vital Records.

Currently, there are 2 additional regulatory actions to amend 12VAC5-550 in progress.

- Town Hall Action 6269 is a Fast Track Action currently under Executive Branch Review. This action incorporates statutory requirements prescribed in Chapter 171 of the 2022 Acts of Assembly.
- Town Hall Action 6459 is a Fast Track Action currently under Attorney General Review. This action addresses non-controversial style and form updates to most sections in this chapter to improve clarity, provide technical updates, and conform the regulatory language to existing form and style standards.

This action updates sections of 12VAC5-550 that were not included in prior Fast-Track actions, and creates a new section within the chapter.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the

promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.

The regulations are promulgated under the authority of §§ 32.1-12, 32.1-250, and 32.1-273 of the Code of Virginia.

- The Board of Health (Board) is the promulgating agency. Va. Code § 32.1-12 authorizes the Board to “make, adopt, promulgate and enforce such regulations...as may be necessary to carry out the provisions of Title 32.1 and other laws of the Commonwealth administered by it, the Commissioner, or the Department.”
- Section 32.1-250 of the Code of Virginia requires the Board to install, maintain and operate the only system of vital records throughout this Commonwealth.
- Section 32.1-273 of the Code of Virginia grants the Board the authority to prescribe fees for certified copies of vital records.

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

The regulatory action seeks to increase clarity, accuracy, and completeness of the regulations governing vital records while reducing regulatory burdens on the public and government organizations.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

The proposed updates will clarify the processes associated with the rejection of delayed birth filings and will specify the fees charged for corrections or amendments to certified vital records and for delayed birth filings.

The action also intends to increase the Delayed Birth Filing Fee and the Vital Record Administrative Fee from \$10 to \$20 per application. A new regulatory section, 12VAC5-550-315, will be added to clearly communicate the requirements followed by applicants when requesting new birth certificates for registrants born to a surrogate in the Commonwealth.

The title of “Part IX. New Birth Certificates after Adoption, Legitimation, Acknowledgement of Paternity, and Court Determination of Paternity” will be updated to include “Surrogacy, and Change of Sex.” Other proposed amendments will align the Regulations to the *Form and Style Requirements* published by the Virginia Registrar of Regulations.

Sections to be amended under the action: 12VAC5-550-270 (Cancellation Records) and 12VAC5-550-520 (Fees).

Sections to be added under the action: 12VAC5-550-315 (Surrogacy).

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

No alternatives to proposed changes regarding cancellation of vital records and the rejection of delayed birth filings were considered as statute authorizes the State Registrar to reject delayed birth filings that have yet to be registered and established.

Fee increases to twenty-five dollars and thirty dollars were also considered; however, these higher fee rates were not selected due to the potential fiscal impact to the public.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and the ORM procedures), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”

This NOIRA is not being used to announce a periodic review or a small business impact review.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia, describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The Virginia Department of Health is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Rilee Bennett; P.O. Box 1000, Richmond, Virginia, 23218; 804-662-6258; 804-662-6256; rilee.bennett@vdh.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://commonwealthcalendar.virginia.gov/>). Both oral and written comments may be submitted at that time.