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Proposed Regulation Agency Background Document

Agency name	Virginia Department of Health
Virginia Administrative Code (VAC) citation(s)	12VAC5-550
Regulation title(s)	Board of Health Regulations Governing Vital Records
Action title	Amend regulations following periodic review
Date this document prepared	February 14, 2018

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing 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 12VAC5-550 *et seq.* "Regulations Governing Vital Records" pursuant to Executive Order (EO) 14 (2010). As a result of this review, the Virginia Department of Health began the regulatory process to amend these regulations. The purpose of the proposed amendments is to make changes for clarity and accuracy, noting that a new certificate of birth may be prepared by the State Registrar for a person born in this Commonwealth upon receipt of a certified copy of an order of a court of competent jurisdiction indicating that the sex of an individual has been changed by medical procedure, and upon request of such person. These changes are necessary to conform the requirements of this section with what the Code of Virginia requires (§ 32.1-269).

The existing regulation indicates that changing one's gender on their birth certificate is only permitted when their gender has been changed by a surgical gender reassignment procedure, and requires

evidence and a notarized affidavit from the physician performing the surgery. The existing regulation also requires that the State Registrar possess a certified copy of the court order changing the name of the registrant as well as designating the sex of the registrant before she may prepare a new birth certificate for the individual.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

There are no acronyms used in this Agency Background Document.

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 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.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

This regulatory action is essential to ensure the accuracy of the Board of Health Regulations Governing Vital Records. Ensuring the integrity of the Commonwealth's system of vital records is essential to the welfare of the citizens of the Commonwealth. The purpose of the intended amendments is to conform the requirements of this section to the provisions of the Code of Virginia.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of changes" section below.

The proposed amendments are to 12VAC5-550-320 and revises 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. The proposed amendments state that that a new certificate of birth may be prepared by the State

Registrar for a person born in this Commonwealth upon receipt of a certified copy of an order of a court of competent jurisdiction indicating that the sex of an individual has been changed by medical procedure, and upon request of such person. These amendments will conform the requirements of this section to the provisions of the Code of Virginia.

Issues

Please identify the issues associated with the proposed regulatory action, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

The primary advantage to the public, the agency and the Commonwealth is to enhance the integrity of the Regulations Governing Vital Records and in turn the system of vital records within the Commonwealth. There are no known disadvantages to the public, the regulated entities, business entities or the Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no requirements of this proposal which are more restrictive than applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No locality is particularly affected by the proposed regulation.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the Board is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the Board is 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 for the public comment file may do so by mail, email or fax to **Janet Rainey, State Registrar and Director of the Division of Vital Records, Post Office Box 1000, Richmond, VA 23220, Telephone number: (804) 662-6200, Fax number: (804) 662-6245, Email: Janet.Rainey@vdh.virginia.gov.** Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. 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 not be held following the publication of this stage of this regulatory action.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures	Projected cost to the state to implement and enforce this regulatory proposal is negligible.
Projected cost of the new regulations or changes to existing regulations on localities.	There is no projected cost to localities to implement and enforce this regulatory proposal.
Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.	The Division of Vital Records and individuals who have Virginia birth certificates.
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	The Division of Vital Records shall be affected. No small business shall be affected.
All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.	There are no projected costs of this regulatory proposal for affected individuals, businesses or other entities.
Beneficial impact the regulation is designed to produce.	Greater clarity and accuracy of the regulations.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. 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 regulation.

There are no viable alternatives to the proposal considered. Regulatory action is necessary to make corrections to the existing regulations in order to conform to the applicable provisions of the Code of Virginia.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

No other alternative regulatory methods are available to the agency. These regulations do not address compliance or reporting requirements. These regulations do not impact small businesses.

Periodic review and small business impact review report of findings

If you are using this form to report the result of a periodic review/small business impact review that was announced during the NOIRA stage, please indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include 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.

The proposed amendments to this regulation are necessary for the protection of public health, safety, and welfare. The proposed amendments are clearly written and easily understandable. These amendments are needed in order to conform the requirements of this section to the provisions of the Code of Virginia. No comments were received during the periodic review of this regulatory chapter. The proposed amendments to the regulation are not complex and simply conform the regulations to what is required by the Code of Virginia. The regulation does not overlap, duplicate, or conflict with federal law or regulation, and the proposed amendments will bring the regulation into conformity with what is required by the Code of Virginia. The periodic review for this regulation was initiated in October 2010.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

No comments were received during the public comment period following the publication of the NOIRA.

Family impact

Please assess the impact of this 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.

The proposed regulatory action shall have no impact on the institution of the family and family stability.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.

For changes to existing regulation(s), please use the following chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
12VAC5-550-320 Change of sex		Except as provided in subdivision 3 of 12VAC5-550-450, upon presentation of acceptable evidence (preoperative diagnosis, postoperative diagnosis and description of procedure) and a notarized affidavit from the physician performing the surgery, a new certificate of birth may be prepared by the State Registrar for a person born in this Commonwealth whose sex has been changed by surgical gender reassignment procedure. A certified copy of the court order	Except as provided in subdivision 3 of 12VAC5-550-450, upon <u>presentation receipt of acceptable evidence (preoperative diagnosis, postoperative diagnosis and description of procedure) and a notarized affidavit from the physician performing the surgery, a certified copy of an order of a court of competent jurisdiction indicating that the sex of an individual has been changed by medical procedure and upon request of such person</u> , a new certificate of birth may be

		<p>changing the name of the registrant as well as designating the sex of the registrant must be in the possession of the State Registrar together with a request that a new certificate be prepared.</p>	<p>prepared by the State Registrar for a person born in this Commonwealth, whose sex has been changed by surgical gender reassignment procedure. A certified copy of the court order changing the name of the registrant as well as designating the sex of the registrant must be in the possession of the State Registrar together with a request that a new certificate be prepared.</p> <p>Intent: Clarifying and correcting language.</p>
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