



Virginia Department of Planning and Budget **Economic Impact Analysis**

12 VAC 5-550 Board of Health Regulations Governing Vital Records
Virginia Department of Health
Town Hall Action/Stage: 6269 / 10048
January 29, 2024

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 19. The analysis presented below represents DPB's best estimate of the potential economic impacts as of the date of this analysis.¹

Summary of the Proposed Amendments to Regulation

The State Board of Health (Board) proposes to update the regulatory text to reflect numerous legislative amendments that affect several components of the vital record program: the process of amending a birth or death certificate in certain situations; certain fees charged; the data elements required for certificates in marriages, divorces, and annulments; as well as editorial, formatting, and clarifying changes necessary to incorporate those legislative changes in the regulatory text.

Background

The proposed action will mainly conform regulatory text to a number of amendments made to the Code of Virginia, as discussed below.

¹ Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

Amendments to Birth Certificates

Chapters 465² and 466³ of the 2020 Session of the General Assembly (identical) amended the process to change one's sex and, if any, also change the name on the birth certificate. Consequently, the regulatory text would be amended in two ways.

First, to strike provisions that require acceptable evidence and a notarized affidavit from the physician who performed the surgery, and a court order that designates the sex of the individual. Instead, the Board would require the health care provider who provided the treatment to submit a specific form to the State Registrar of Vital Records (State Registrar) stating that clinically appropriate treatment for gender transition was provided.

Second, the proposed language would continue to allow issuance of a new birth certificate to show a new name following a change of sex, and a certified copy of a court order changing the name would continue to be required. New language would also authorize the State Registrar to request other evidence to verify the individual's identity. According to Virginia Department of Health (VDH) staff, this information would have submitted to the Circuit Court in order to obtain the court order that changed their name. Such additional information may be needed to accurately identify the individual, because a court order granting a name change may not contain enough information to accurately identify the person's birth certificate given that multiple people born in the Commonwealth may have the same name.

Essentially, the proposed language would require completion of a form instead of requiring evidence of specific surgical procedures and diagnoses, and a court order that designates the sex of the individual.

Amendments to Death Certificates

Similarly, Chapters 116⁴ and 117⁵ of the 2022 Session of the General Assembly (identical) altered the death certificate amendment procedure. As a result, the proposed regulatory text would allow for changes to be made to any demographic information administratively (i.e., without a court order) within 45 days instead of the current 30 days.

² <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP0465>

³ <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP0466>

⁴ <https://lis.virginia.gov/cgi-bin/legp604.exe?221+ful+CHAP0116&221+ful+CHAP0116>

⁵ <https://lis.virginia.gov/cgi-bin/legp604.exe?221+ful+CHAP0117&221+ful+CHAP0117>

Changes could also be made beyond 45 days to specific death certificate information (i.e., to correct the spelling of the name of the deceased, the deceased's parent or spouse, or the informant; the sex, age, race, date of birth, place of birth, citizenship, social security number, education, occupation, military status, or date of death of the deceased; the place of residence of the deceased, if located within the Commonwealth; the name of the institution; the county, city, or town where the death occurred; or the street or place where the death occurred).

In essence, the legislation allowed an additional 15 days for any administrative amendment, and allowed administrative changes to certain information beyond 45 days. Other changes requested after the 45 day period would continue to require a court order. Thus, there would be fewer instances in which individuals seeking to amend a death certificate would need to pay court fees to obtain a court order.

Another proposed change would affect whether a change in name on a birth certificate is considered to be an amendment. Whether a vital record is labeled as "amended" does not affect how the Virginia Registrar treats that record, but the amended status may affect how third parties treat its evidentiary value. For example, an application for a passport with an amended record may prompt the issuing federal agency to request the original document or additional evidence related to the amendment.

Current language states that a birth certificate on which a name is amended within seven years of birth will not be considered to be amended. The proposal would reduce the seven-year time frame to one year, to comply with Chapters 116 and 117. These acts amended § 32.1-269 (B) of the Code, which now requires the Board to "prescribe by regulation the conditions under which omissions or errors on certificates [...] may be corrected within one year after the date of the event without the certificate being marked amended." The one-year time frame has already been enforced in practice, and thus the proposed change would update the regulatory language to conform with the Code.

Fees:

Chapter 171⁶ of the 2022 General Assembly removed the authority to charge a fee associated with obtaining a stillbirth certificate for unintended, intrauterine fetal deaths. The

⁶ <https://lis.virginia.gov/cgi-bin/legp604.exe?221+ful+CHAP0171>

intent of the legislation is to provide stillbirth certificates free of charge. This fee was \$12 per certificate prior to the legislation. Accordingly, the proposal would update the regulation by removing that fee.

The 2004 Appropriation Act (Item 309 A)⁷ updated the “standard vital records fee” from \$10 to \$12, and the \$12 fee amount continues to be included in the budget (Item 290 A, Chapter 1 of the 2023 Acts of Assembly, Special Session I⁸). However, the fee stated in the regulation has not been updated and currently stands at \$10. The proposed change updates the regulatory text to conform to the fee amount stated in the Appropriation Act.

Removal of Race Data:

Chapters 209,⁹ 210,¹⁰ and 211¹¹ of the 2020 Acts of Assembly (all identical) removed race from the data to be collected regarding marriages, divorces, and annulments. According to VDH, these legislative actions were prompted by an order in a federal court case where the plaintiffs declined to put their races on an application for a marriage license and the court found that it was unconstitutional to require race information as a condition of issuing a marriage license.¹²

Discretionary Changes:

The remaining proposed changes in this action repeal language that is non-regulatory in nature (i.e., purpose and administration of the regulation, application of Administrative Process Act, and non-exclusivity of powers and procedures of the Board); revise forms to include necessary data elements and to conform to changes in legislation; and make clarifying and formatting changes to improve the readability of the regulation. In short, VDH reports that the business operations of the Office of Vital Records have already been changed to conform to the new laws, but the regulations have not yet been updated.

⁷ <https://budget.lis.virginia.gov/item/2004/2/HB5001/Chapter/1/309/>

⁸ <https://budget.lis.virginia.gov/item/2022/2/HB30/Chapter/1/290/>

⁹ <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP0209>

¹⁰ <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP0210>

¹¹ <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP0211>

¹² Rogers v. Virginia State Registrar, 507 F. Supp. 3d 664 (E.D. Va. 2019), <https://casetext.com/case/rogers-v-va-state-registrar>

Estimated Benefits and Costs

The legislative changes discussed above conferred benefits to the affected individuals by eliminating court costs to amend birth and death certificates, reducing certain fees, and removing the requirement to declare race on applications related to marriages, divorces, and annulments.

More specifically, individuals seeking to change the sex on their birth certificate can now accomplish this through a simplified administrative process that does not require court costs and extensive documentation from the physician. In 2023, there were 531 cases where an individual changed their sex on their birth certificate. However, according to VDH, legal fees can range widely, so the agency does not have a way to calculate this potential benefit. Physicians who provide treatment for gender transition would also benefit as they can satisfy the legal requirements by completing a form rather than providing documentary evidence. Additionally, the proposed regulation would conform to the Code of Virginia and more clearly and accurately reflect the process to change one's sex and name on their birth certificate, which may reduce confusion.

The flexibility provided to amend a death certificate would also benefit individuals who seek such amendments, and VDH reports that 2,227 death certificates were amended in 2023. However, VDH lacks data to estimate the number of additional certificates that may result from extending the timeline. Additionally, VDH states that legal fees can range widely, so it does not have a way to calculate the dollar value of this potential benefit. In addition to financial benefits, the proposed regulations would also conform to the Code of Virginia and more clearly and accurately reflect the process to amend a death certificate.

Providing still birth certificates free of charge would provide some benefit to the applicants. In Virginia, VDH reports that there were approximately 2,800 unintended, intrauterine fetal deaths between 2018 and 2020. This led to 229 applications for certificates, which equals an average savings of \$916 per year if fees were not charged during that time period.

The amendment of the \$10 fee to \$12 as per the Appropriation Act has already increased the revenue collected since 2004. For example, VDH reports that 957,783 certificates were issued in fiscal year 2023, which translates to approximately \$1.9 million in additional fee

revenues for that year. However, it is worth noting that this fee increase has already been in effect for almost two decades.

Removing the requirement to report race on marriage, divorce, and annulment certificates benefits those individuals who decline to provide their race on an application to obtain such records. In 2022, there were 52,085 registered marriages and 24,887 divorces/annulments. Additionally, the proposal conforms to the Code of Virginia.

Other proposed changes are discretionary, as opposed to those changes mandated by law, and are beneficial mainly in that they would provide conformity to the underlying statutes, eliminate potential confusion between the regulatory text and the laws, and overall improve the clarity of the regulatory requirements.

Businesses and Other Entities Affected

According to VDH, there were 531 amendments to change sex in 2023, 2,227 death certificates amended in 2023, 52,085 registered marriages and 24,887 divorces/annulments in 2022, approximately 76 applications for still birth certificates in 2020, and approximately 957,783 certificates issued in fiscal year 2023 subject to the \$12 fee. None of the affected entities appear to be disproportionately affected.

The Code of Virginia requires the DPB to assess whether an adverse impact may result from the proposed regulation.¹³ An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As noted above, this regulatory proposal would mainly provide conformity to related changes in the statute and improve clarity. The discretionary regulatory changes do not appear to introduce any new requirements and compliance costs. Thus, an adverse impact is not indicated.

¹³ Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define “adverse impact,” state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

Small Businesses¹⁴ Affected:¹⁵

The proposed amendments to the regulatory text do not appear to adversely affect small businesses.

Localities¹⁶ Affected¹⁷

The proposed regulatory amendments do not create new costs, nor do they disproportionately affect particular localities.

Projected Impact on Employment

The proposed regulatory amendments do not appear to affect total employment.

Effects on the Use and Value of Private Property

No effect on the use and value of private property nor on real estate development costs is expected.

¹⁴ Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

¹⁵ If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

¹⁶ “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

¹⁷ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.