

NOTICE OF PUBLIC HEARING

Subject: Opportunity to Comment on Proposed Amendment of Article 201 (Births) of the New York City Health Code (Title 24 of the Rules of the City of New York)

Date / Time: August 9, 2013/ 2:00PM to 4:00PM

Location: New York City Department of Health and Mental Hygiene
Gotham Center, 14th Floor, Room 14-44
42-09 28th Street
Long Island City, NY 11101-4132

Contact: Rena Bryant
New York City Department of Health and Mental Hygiene
Board of Health
Secretary to the Board
Gotham Center, 14th Floor, WS 14-55, Box 31
Long Island City, NY 11101-4132
(347) 396-6071

Proposed Rule

The Department of Health and Mental Hygiene (“the Department”) is proposing that the Board of Health amend subdivision 201.05(d) of Article 201 of the Health Code to require electronic reporting of acknowledgments of paternity.

Instructions

- You may pre-register to speak at the hearing by contacting Rena Bryant at the address or phone number above before August 8, 2013.
- The Department will also consider written comments that it receives about the proposed amendment. Written comments must be received by the Department on or before the date of the hearing. Written comments can be mailed to Rena Bryant at the address above. They may also be submitted by e-mail to resolutioncomments@health.nyc.gov or posted electronically (without attachments) at either <http://www.nyc.gov/html/doh/html/about/notice.shtml> or through NYC RULES at www.nyc.gov/nycrules.
- To request a sign language interpreter or any other form of reasonable accommodation for a disability at the hearing, please contact Rena Bryant at the phone number above by July 26, 2013.
- Copies of written comments and a transcript of oral comments received at the hearing will be available within a reasonable time after the hearing transcript becomes available, between the hours of 9:00 A.M. and 5:00 P.M. and at the contact address above.
- The Department’s general policy is to make written comments available for public viewing on the Internet. The comments it receives, including any personal information provided with the

comment, will be posted without change to
<http://www.nyc.gov/html/doh/html/about/comment.shtml>.

STATEMENT OF BASIS AND PURPOSE

Statutory authority

This amendment to the New York City Health Code (the “Health Code”) is issued in accordance with §§ 556, 558 and 1043 of the New York City Charter (the “Charter”). Section 556 of the Charter provides the Department of Health and Mental Hygiene (the “Department”) with the authority to regulate all matters affecting health in the City of New York. Sections 558(b) and (c) of the Charter empower the Board of Health (the “Board”) to amend the Health Code and to include in the Health Code all matters over which the Department has authority. Section 1043 of the Charter gives the Department rulemaking powers.

Basis and purpose of the changes

The Department requests that the Board amend Section 201.05(d) of the Health Code to require electronic reporting of acknowledgments of paternity for facilities reporting 100 or more live births annually.

Currently, facilities report most vital events using the Electronic Vital Event Registration System (EVERS). The Department has required all facilities reporting 100 or more live births annually to report them electronically since January 1, 1997. More than 99% of the 123,000 live births each year are reported electronically. Paper forms are used for home births, but most in-home delivery attendants voluntarily use EVERS for such reporting.

If a mother is not married, an Acknowledgment of Paternity (AOP) provides a way to legally establish paternity for a child (Public Health Law §4135-1). The AOP form can only be used if the mother was not married at any time during the pregnancy or when the child was born, and if only one man could be the father of the child. The AOP must be signed by both the mother and the father before two witnesses not related to the parents. Hospitals file about 30% of all live births in New York City (36,000 annually) with AOPs. Parents later file another 5,000 AOPs, at which time a replacement birth record is prepared by the Department's Bureau of Vital Statistics. AOPs must be filed with the Department to be effective.

At this time, all AOPs are completed on paper. However, the Department requires all hospital births to be reported electronically. Consequently, the Bureau of Vital Statistics receives the birth records immediately upon completion, but must wait for messenger or mail delivery of the associated paper AOPs. This delays birth registration and further processing, and often necessitates follow-up to hospitals for missing or incomplete AOPs. The proposed amendment will allow for a more efficient method in which hospitals will send the AOPs electronically through secure fax/image transmission to the Bureau of Vital Statistics. To make the process consistent with existing birth reporting practices, the proposed amendment would require all facilities reporting 100 or more live births per year to report acknowledgments of paternity electronically. To give facilities and the Department time to prepare, the Department proposes that the requirement take effect on January 1, 2014.

The Department seeks to further require facilities to retain AOPs reported electronically for a period of at least three years from the date of birth and require facilities to make these records available to

the Department for inspection upon request. This retention period would be consistent with the current requirement for hospitals to retain birth worksheets, and would enable inspection of original AOPs if necessary.

Statement pursuant to Charter §1043. The proposed amendments were not included in the Department's FY 2013 Regulatory Agenda because the need for the amendments was not anticipated at the time the Regulatory Agenda was promulgated.

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

New text is underlined; deleted material is in [brackets].

The resolution is as follows:

RESOLVED, that subdivision 201.05(d) of Article 201 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be amended to be printed as follows:

§201.05 Preparation and certification of certificate of birth and confidential medical report of birth.

* * * * *

(d) All facilities required to file birth certificates electronically and facilities reporting fewer than 100 births per year which elect to report electronically, shall apply to the Department prior to implementing any system and, upon approval by the Department, shall make electronic reports of births and, on and after January 1, 2014, acknowledgments of paternity, only in such manner and on computer programs prescribed and provided or otherwise authorized by the Department. Facilities subject to this requirement must retain acknowledgments of paternity reported electronically for a period of at least three years from the date of birth and must make these records available to the Department for inspection upon request.

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Proposed Amendment of Article 201 (Births) of the NYC Health Code

REFERENCE NUMBER: 2013 RG 056

RULEMAKING AGENCY: Department of Health and Mental Hygiene

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: June 24, 2013

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Proposed Amendment of Article 201 (Births) of the NYC Health Code

REFERENCE NUMBER: DOHMH-33

RULEMAKING AGENCY: Department of Health and Mental Hygiene

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Andrea Bender
Mayor's Office of Operations

June 24, 2013
Date