

**Department of Legislative Services**  
Maryland General Assembly  
2016 Session

**FISCAL AND POLICY NOTE**  
**First Reader - Revised**

House Bill 1099 (Delegate Cullison)  
Health and Government Operations

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**Vital Records - New Certificates of Birth - Gender Identity**

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This bill requires the Secretary of Health and Mental Hygiene to issue a new birth certificate for an individual if the Department of Health and Mental Hygiene (DHMH) receives a written request and a signed statement under penalty of perjury from the individual (or if the individual is a minor or a disabled person under guardianship, from the individual's parent, guardian, or legal representative) that the individual's gender identity differs from the sex designated on the original birth certificate. The bill also expands the definition of "licensed health care practitioner" to allow additional specified individuals to attest that a person should be issued a new birth certificate to reflect a sex change designation.

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**Fiscal Summary**

**State Effect:** Minimal increase in general fund revenues, to the extent DHMH receives additional requests for changes to birth certificates under the bill. Expenditures are not materially affected.

**Local Effect:** None.

**Small Business Effect:** None.

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**Analysis**

**Bill Summary:** "Gender identity" means the gender-related identity, appearance, expression, or behavior of an individual, regardless of the individual's assigned sex at birth, which may be demonstrated by (1) consistent and uniform assertion of the individual's

gender identity or (2) any other evidence that the gender identity is sincerely held as part of the individual's core identity.

The bill includes the following professionals in the definition of "licensed health care practitioner": (1) a licensed certified social worker; (2) a licensed graduate social worker practicing under the direct supervision of a licensed certified social worker-clinical; (3) a licensed clinical professional counselor; (4) a licensed graduate professional counselor; and (5) a physician assistant.

**Current Law:** Pursuant to Chapters 484 and 485 of 2015, the Secretary of Health and Mental Hygiene must issue a new birth certificate for an individual if DHMH receives proof that the individual was born in this State and that one of the following occurred:

- *Certification by a licensed health care practitioner:* A licensed health care practitioner who has treated or evaluated the individual has determined that the individual's sex designation should be changed because the individual underwent treatment for sex transition or has been diagnosed with an intersex condition and the health care practitioner signed a statement under penalty of perjury attesting to these facts. The individual or the individual's legal guardian must also have made a written request for a new birth certificate with a change in sex designation. A "licensed health care practitioner" is defined as a licensed physician, psychologist, registered nurse (who is also certified as a nurse practitioner, nurse psychotherapist, or clinical nurse specialist), or a certified social worker-clinical. Individuals licensed to practice one of the listed professions in another state but who meet the requirements for licensure in this State also qualify.
- *Court order:* A court of competent jurisdiction issued an order indicating that the individual's sex has been changed.
- *Amendment of original birth certificate:* Prior to October 1, 2015, the Secretary, pursuant to regulations, amended an original birth certificate on receipt of a certified copy of an order of a court of competent jurisdiction indicating the sex of the individual had been changed.

The sex designation on the new birth certificate must be the sex designation for which proof has been submitted; if the name of the individual changed at any time, the name on the new birth certificate must be the name that was last established and for which appropriate documentation has been submitted to DHMH. A new birth certificate may not be marked as "amended" or show on its face that a sex designation or name change was made.

Under Title 19 of the Health Occupations Article, a licensed certified social worker may not (1) treat mental or emotional disorders or provide psychotherapy without the direct supervision of a licensed certified social worker-clinical or (2) diagnose a mental disorder without the direct supervision of a licensed certified social worker-clinical. A licensed graduate social worker may not (1) practice graduate social work without the supervision of a licensed certified social worker, licensed certified social worker-clinical, or licensed graduate social worker who meets the requirements specified in regulations; (2) treat mental or emotional disorders or provide psychotherapy without the direct supervision of a licensed certified social worker-clinical; (3) diagnose a mental disorder without the direct supervision of a licensed certified social worker-clinical; or (4) engage in private practice without the direct supervision of a licensed certified social worker-clinical.

Under Title 17 of the Health Occupations Article, an individual licensed as a clinical professional counselor may provide services involving the application of counseling principles and methods in the diagnosis, prevention, treatment, and amelioration of psychological problems, emotional conditions, or mental conditions of individuals or groups. An individual may practice under clinical supervision as a licensed graduate professional counselor.

A physician may delegate medical acts to a physician assistant by filing and executing a delegation agreement with the State Board of Physicians (MBP). A physician assistant may only practice under the supervision of a licensed physician and may only perform tasks that are authorized in a delegation agreement. A delegation agreement that includes specified tasks requires approval by MBP.

**State Revenues:** General fund revenues increase minimally beginning in fiscal 2017, to the extent additional individuals request changes to birth certificates under the bill. DHMH's Vital Statistics Administration (VSA) advises it anticipates approximately 300 requests per year under the bill (twice as many requests for sex change designations as it currently receives). In part, the anticipated volume of new requests is because VSA notes that the bill does not require any independent documentation supporting a birth certificate change based on gender identity. VSA advises that self-attestation is not considered proper evidence under existing policies and procedures for birth records, nor is it considered acceptable under national vital records standards.

The current fee for a change to a birth certificate is \$24. The Department of Legislative Services notes that Senate Bill 389/House Bill 459 (the Administration's Fee, Surcharge and Tax Reduction Act of 2016) would, among other things, reduce the current fee for changes to a birth certificate from \$24 to \$12.

**Additional Comments:** As noted previously, licensed certified social workers may not treat or diagnose a mental condition except under the supervision of a licensed certified social worker-clinical, and a graduate professional counselor must practice under clinical supervision; the bill does not specifically address these scope of practice limitations.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Maryland Association of County Health Officers, Department of Health and Mental Hygiene, Department of Legislative Services

**Fiscal Note History:** First Reader - March 2, 2016  
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