

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulation
Department of Health and Mental Hygiene
(DLS Control No. 15-257)**

Overview and Legal and Fiscal Impact

The regulation removes the requirement that an individual who has had a sex change by surgery and wishes to amend data other than the individual's name on a birth certificate submit to the Secretary of Health and Mental Hygiene a court order that 1) specifies that the sex of the individual has been changed; and 2) directs the Secretary to change the data concerning the sex of the individual.

The regulation presents no legal issues of concern.

There is no fiscal impact on State or local agencies.

Regulation of COMAR Affected

Department of Health and Mental Hygiene:

Health Statistics: Vital Records: COMAR 10.03.01.03

Legal Analysis

Background

Chapters 484 and 485 of 2015 required the Secretary of Health and Mental Hygiene to issue a new birth certificate for an individual if (1) a licensed health care practitioner has determined that the individual has undergone a sex change or has an intersex condition; (2) a court has issued an order that the sex of an individual born in this State has been changed; or (3) prior to October 1, 2015, the Secretary amended an original birth certificate on receipt of a court order indicating the sex of the individual had been changed.

Summary of Regulation

The regulation removes the requirement that an individual who has had a sex change by surgery and wishes to amend data other than the individual's name on a birth certificate submit to the Secretary a court order that (1) specifies that the sex of the individual has been changed and (2) directs the Secretary to change the data concerning the sex of the individual. This change conforms the regulation to Chapters 484 and 485 of 2015, which amended § 4-211(b) of the Health – General Article.

Legal Issues

The regulation presents no legal issues of concern.

Statutory Authority and Legislative Intent

The Department of Health and Mental Hygiene cites § 4-211(b) of the Health – General Article as statutory authority for the regulation. Section 4-211(b) requires the Secretary to issue a new certificate of birth for an individual if the Department receives satisfactory proof that (1) the individual was born in this State and (2) regardless of the location, one of the following has occurred:

- 1. a licensed health care practitioner has determined that the individual’s sex designation should be changed because the individual has undergone treatment for sex transition or has been diagnosed with an intersex condition;
- 2. the individual, or if the individual is a minor or disabled person under guardianship, the individual’s parent, guardian, or legal representative, has made a written request for a new certificate of birth with a sex designation that differs from the sex designated on the original certificate of birth; and
- 3. the licensed health care practitioner has signed a statement, under penalty of perjury, that (1) the individual has undergone surgical, hormonal, other treatment appropriate for the individual; or (2) the individual has an intersex condition and in the professional opinion of the practitioner, the individual’s sex designation should be changed accordingly;
- a court of competent jurisdiction has issued an order indicating that the sex of an individual born in this State has been changed; or
- before October 1, 2015, the Secretary, as provided under regulations adopted by the Department, amended an original certificate of birth on receipt of a certified copy of an order of a court of competent jurisdiction indicating the sex of the individual had been changed.

This authority is correct and complete. The regulation complies with the legislative intent of the law.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The regulation implements provisions of Chapters 484 and 485 of 2015 (Senate Bill 743 and House Bill 862), which amended the criteria for an individual to obtain a new birth certificate as a result of a sex change or diagnosis of an intersex condition. The department advises that general fund revenues increase by an estimated \$4,800 annually beginning in fiscal 2016, based on an assumption that 100 individuals per year will request to change the sex listed on their birth certificate and will pay a fee of \$24 for amendment of the certificate and \$24 for a copy of the new certificate. The Department of Legislative Services disagrees as the regulation only removes the requirement that a court order be submitted specifying that the sex of the individual has been changed by surgery. The fiscal and policy notes for Senate Bill 743 and House Bill 862 noted that the legislation did not materially affect State operations or finances.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that the regulation has minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

Contact Information

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