

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 37.8.102 and 37.8.311) PROPOSED AMENDMENT
pertaining to the amendment of birth)
certificate gender designations and)
issuance of a replacement certificate)

TO: All Concerned Persons

1. On October 12, 2017, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on September 28, 2017, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

37.8.102 DEFINITIONS In addition to the definitions contained in 50-15-101, MCA, the following definitions apply to this chapter:

(1) through (7) remain the same.

(8) "Intersex condition" means having, or having been diagnosed by a medical professional to have, any of a variety of conditions in which a person is born with a variation of chromosomes, gonads, sex hormones, or reproductive anatomy that is incongruent with typical notions of female or male bodies.

(8) through (12) remain the same, but are renumbered (9) through (13).

AUTH: 50-15-102, 50-15-103, MCA

IMP: 50-15-101, 50-15-103, MCA

37.8.311 ADOPTIONS, NAME CHANGES, AND ~~SEX~~ GENDER CHANGES

(1) through (4) remain the same.

(5) The ~~sex~~ gender of a registrant as cited on a certificate may be ~~amended only~~ corrected if the department receives ~~a certified copy of an order~~

from a court with appropriate jurisdiction indicating that the sex of an individual born in Montana has been changed by surgical procedure. :

(a) a correction affidavit accompanied by a completed gender designation form issued by the department certifying under penalty of law that that the individual has undergone gender transition or has an intersex condition and that the gender designation on their birth certificate should be changed accordingly, and the request for gender designation is for the purpose of ensuring the birth certificate accurately reflects their gender and is not for any fraudulent or other unlawful purpose; or

(b) a correction affidavit accompanied by presentation of a government-issued identification displaying the correct gender designation; or

(c) a correction affidavit accompanied by a certified copy of an order from a court with appropriate jurisdiction indicating that the gender of an individual born in Montana has been changed. The order must contain sufficient information for the department to locate the original record. If the registrant's name is also to be changed, the order must indicate the full name of the registrant as it appears on the original birth certificate and the full name to which it is to be amended.

(6) If the order directs the issuance of a A new certificate issued pursuant to (5) will that does not show amendments, the new certificate will not indicate on its face that it was amended, and the old certificate will be placed in a sealed file. If the sex gender of an individual was listed incorrectly on the original certificate due to a data entry error, refer to ARM 37.8.108.

AUTH: 50-15-102, 50-15-103, 50-15-204, 50-15-223, MCA

IMP: 50-15-102, 50-15-103, 50-15-204, 50-15-223, MCA

4. STATEMENT OF REASONABLE NECESSITY

The department is proposing to amend ARM 37.8.102 and 37.8.311 in order to conform departmental processes related to birth certificate gender designations with modern medical practices, assist in preventing potential discriminatory coverage exclusions by health insurance plans, and to minimize the potential for discrimination pursuant to Section 1557 of the Patient Protection and Affordable Care Act of 2010 (42 U.S.C. 18116) (Section 1557). Because the department is a covered entity within the meaning of Section 1557, it provides individuals equal access to health programs and activities without discrimination on the basis of gender, and treats individuals consistent with their gender identity. Mismatched identification, however, can lead to denial of benefits and other potentially discriminatory acts. The proposed amendments are necessary for the department to fully meet its obligations under state and federal authorities, and conform vital records processes to the recommendations of The American Medical Association, American Psychological Association, World Professional Association for Transgender Health, and National Association of Social Workers.

Fiscal Impact

This proposed rule amendment has an administrative cost of \$000.00 in state fiscal year (SFY) 2017 and \$000.00 in SFY 2018.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on October 20, 2017. Comments may also be faxed to (406) 444-9744 or e-mailed to dphslegal@mt.gov.

6. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Nicholas Domitrovich
Nicholas Domitrovich, Attorney
Rule Reviewer

/s/ Sheila Hogan
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State September 11, 2017.