

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 37.8.107 and 37.8.116) PROPOSED AMENDMENT
pertaining to vital records)

TO: All Concerned Persons

1. On October 11, 2019, at 9:00 a.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 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 30, 2019, to advise us of the nature of the accommodation that you need. Please contact Gwen Knight, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 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:

37.8.107 AMENDMENT OF VITAL RECORD (1) through (7) remain the same.

(8) Except as provided in (5) and (6), Any subsequent change to information previously amended ~~through this process~~ under this rule requires an order from a court with appropriate jurisdiction.

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, 50-15-403, MCA

37.8.116 FEES FOR CERTIFICATION, FILE SEARCHES, AND OTHER VITAL RECORDS SERVICES (1) The fee for a certified copy (photocopy or computer-produced) of a birth certificate, a fetal death certificate, an acknowledgment of paternity, or a delayed birth registration is \$12 ~~for the first copy of a specific request and \$5 for each additional copy of the same record requested at the same time as the first copy.~~

(2) The fee for a certified copy (photocopy or computer-produced) of a death certificate is \$15 ~~for the first copy of a specific request and \$8 for each additional copy of the same record request, at the same time, as the first copy. \$3.00 from each copy purchased from the department will be deposited into a special revenue~~

account held by the Department of Labor and Industry for the general administration of the Board of Funeral Service.

(3) The fee for an informational copy of a death certificate is \$13.00. ~~\$3.00 from each copy purchased from the department will be deposited into a special revenue account held by the Department of Labor and Industry for the general administration of the Board of Funeral Service.~~

(4) through (7) remain the same.

(8) The fee for filing a delayed registration of a vital record is \$25. A certified copy of the delayed certificate will be provided to the person filing the delayed registration for a fee of \$12.

(9) and (10) remain the same.

(11) The fee to provide electronic copies of index files is ~~\$25~~ \$50 per monthly update and ~~\$25~~ \$50 for an annual update.

(12) The fee for producing aggregate statistics is ~~\$25~~ \$50 per hour for programming and processing if that processing takes more than half an hour's work on existing programs.

(13) and (14) remain the same.

AUTH: 50-15-102, 50-15-103, 50-15-111, MCA

IMP: 42-2-218, 50-15-111, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.8.107 and ARM 37.8.116 relating to the amendment of vital records and fees for vital record services. The following describes the purpose of the proposed rule amendments and necessity pertaining to the proposed amendments to the rules.

ARM 37.8.107

This rule sets out the process for amendment of vital records. The department is proposing to amend ARM 37.8.107(8) to clarify when a court order is necessary to amend a vital record. The proposed amendment clarifies that department supervisory staff may amend a vital record to protect the integrity, accuracy, and validity of the record without obtaining a court order. The proposed amendment also clarifies that medical certifications for cause of death may be amended without a court order when there is no dispute as to the cause of death. The proposed changes are necessary to eliminate uncertainty and confusion about when a court order is required to amend a vital record.

ARM 37.8.116

ARM 37.8.116 sets out fees for obtaining copies of vital records certificates; processing changes and amendments to records, e.g., adoptions; corrections; file searches; and obtaining customized analyses or research data sets based on vital records.

The department is proposing to amend the rule in two aspects. First, the department is proposing to remove an outdated reference to depositing a portion of the fee charged for copies of death certificates into a state special revenue account administered by the Board of Funeral Service. This requirement no longer exists under the law as the result of the sunset of House Bill (HB) 223 passed during the 2015 Montana Legislative Session. The rule change is necessary to ensure the rule conforms with current law.

Second, the department is proposing to modify and increase fees charged for copies of certain vital records and the fee charged for producing aggregate statistics. The fees for these services have not been revised or increased since 2002. Some of the activities involve substantial amounts of staff time, and the fees currently in effect do not cover the actual cost of these activities. Accordingly, taxpayers are presently subsidizing the cost of providing these services to the direct users of the services. The proposed fee increases will shift a greater proportion of the actual cost of the services to the individuals who directly use them.

The current fee for a certified copy of a birth certificate, fetal death certificate, acknowledgement of paternity, or delayed birth registration is \$12 for the first copy and \$5 for each additional copy. The proposed amendment would change the fee by charging \$12 per certified copy, regardless of the number of copies requested.

The current fee for a certified copy of a death certificate is \$15 for the first copy and \$8 for each additional copy. The proposed amendment would change the fee by charging \$15 per certified copy, regardless of the number of copies requested.

There is currently no fee for providing a copy of a delayed certificate to the person filing the delayed registration. The proposed amendment would impose a fee of \$12.

The fee to provide electronic copies of index files is currently \$25 per monthly update and \$25 for an annual update. The proposed amendment would increase each of these fees to \$50. The fee for producing aggregate statistics is currently \$25 per hour. The proposed amendment would increase this fee to \$50 per hour.

These proposed fee changes will better reflect the cost of providing the services and reduce the subsidy these activities receive from other Office of Vital Statistics (OVS) revenue.

Fiscal Impact

ARM 37.8.107

There is no anticipated fiscal impact associated with the proposed amendment of this rule.

ARM 37.8.116

The OVS processes approximately 1,000 requests for additional certified copies per year.

800 x \$7 = \$5,600 additional revenue (births)
200 x \$7 = \$1,400 additional revenue (deaths)

The OVS processes approximately 20 delayed registrations of a Vital Record per year.

20 x \$12 = \$240 additional revenue

The OVS currently processes 20 monthly requests for index files.

20 x \$25 x 12 months = \$6,000 additional revenue

The OVS creates an average of five research data sets or customized analyses per year. It takes an average four hours to create each data set or analysis.

5 x 2 hours x \$25 additional fee per hour = \$250

Most citizens never have occasion to request additional copies of birth and death certificates. Those who need these services typically need only one transaction. Individuals who request research data sets and index files are usually grant-funded investigators. The increased costs are modest for the number of individuals affected.

Total estimated additional annual revenue for OVS: \$13,490.

Estimated number of persons affected: 1,045

5. The department intends to make these proposed rules effective as of January 1, 2020.

6. 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: Gwen Knight, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., October 18, 2019.

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

8. 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 6 above or may be made by completing a request form at any rules hearing held by the department.

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

10. 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/ Robert Lishman
Robert Lishman
Rule Reviewer

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

Certified to the Secretary of State September 10, 2019.