

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, 37.8.116, and ) PROPOSED AMENDMENT  
37.8.311 pertaining to fees for copies )  
of death certificates, the amendment )  
of birth certificate gender )  
designations, and issuance of a )  
replacement certificate )

TO: All Concerned Persons

1. On June 17, 2021, at 9:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rules. Because there currently exists a state of emergency in Montana due to the public health crisis caused by the coronavirus, there will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/82733380226>. Meeting ID: 827 3338 0226; or

(b) Dial by telephone +1 646 558 8656. Meeting ID: 827 3338 0226. Find your local number: <https://mt-gov.zoom.us/j/82733380226>.

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 June 11, 2021, to advise us of the nature of the accommodation that you need. Please contact Heidi Clark, 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](mailto: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.~~

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

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

IMP: 50-15-101, 50-15-103, MCA; Sections 1 and 2, Chapter 332, L. 2021

37.8.116 FEES FOR CERTIFICATION, FILE SEARCHES, AND OTHER VITAL RECORDS SERVICES (1) remains the same.

(2) The fee for a certified copy (photocopy or computer-produced) of a death certificate is ~~\$15~~ \$16 for each copy, including any additional certified copies requested at the same time as the first certified copy.

(3) The fee for an informational copy of a death certificate is ~~\$13.00~~ \$14 for each copy.

(4) through (14) remain the same.

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

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

37.8.311 ADOPTIONS, NAME CHANGES, AND GENDER SEX CHANGES

(1) through (4) remain the same.

(5) The gender ~~sex~~ of a registrant as cited on a certificate may be ~~corrected~~ amended only 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. 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. If the order directs the issuance of a new certificate that does not show amendments, the new certificate will not indicate on its face that it was amended. If the sex of an individual was listed incorrectly on the original certificate, refer to ARM 37.8.108.

~~(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) A new certificate issued pursuant to (5) will not show amendments, will not indicate on its face that it was amended, and the old certificate will be placed in a sealed file. If the 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; Sections 1 and 2, Chapter 332, L. 2021

#### 4. STATEMENT OF REASONABLE NECESSITY

##### ARM 37.8.102 and 37.8.311

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.8.102 and 37.8.311 to meet the requirements of Senate Bill (SB) 280 passed during Montana's 67th Legislative Session. SB 280 revises vital records laws regarding the amendment of sex designations on birth certificates. Except in cases of correcting a data entry error, SB 280 provides the sex of a person designated on a birth certificate may be amended only if the department receives a certified copy of an order from a court with appropriate jurisdiction indicating that the sex of the person has been changed by surgical procedure. SB 280 requires the department to amend its administrative rules to conform with this new law and expresses an intent for the rules to be substantively the same as those in existence prior to adoption of MAR Notice No. 37-807.

Consistent with the requirements of SB 280 and the intent expressed by the Legislature, the proposed rule amendments remove language allowing for the amendment of birth certificate gender designations. The proposed rules allow for amendment of birth certificate sex designations only in cases in which there is a court order indicating that the sex of a person has been changed by surgical procedure. The proposed rules are necessary to implement the requirements of SB 280 and comply with the new law.

##### ARM 37.8.116

The department is proposing to amend ARM 37.8.116 to meet the requirements of House Bill (HB) 139 passed during Montana's 67th Legislative Session. HB 139 statutorily sets minimum fees the department must charge for certified and informational copies of death certificates. The bill requires the department to charge a minimum fee of \$16.00 for each certified copy of a death certificate, including any additional certified copies requested at the same time as the first certified copy. The bill also requires the department to charge a minimum fee of \$14.00 for each informational copy of a death certificate. The department has determined these minimum fees are sufficient to cover the costs currently associated with providing copies of death certificates, and therefore is proposing adoption of the minimum allowed fees.

The proposed rule amendments are necessary to implement the minimum fee requirements and to comply with the new law.

##### Fiscal Impact

There is no anticipated fiscal impact associated with the proposed amendments to ARM 37.8.102 and 37.8.311.

The department anticipates the following fiscal impact associated with the amendment of ARM 37.8.116.

The department processes approximately 1,056 requests for copies of death certificates per year. Some of these requests include requests for multiple copies. The department provides approximately 1,169 total copies of death certificates per year.

$$1,169 \times \$1.00 \text{ fee increase} = \$1,169.00$$

Under HB 139, the revenue generated from the \$1.00 increase in fees will be transferred into a special revenue account held by the Department of Labor and Industry for the general administration of the Board of Funeral Service.

Estimated number of persons affected: 1,056.

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: Heidi Clark, 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 [dphslegal@mt.gov](mailto:dphslegal@mt.gov), and must be received no later than 5:00 p.m., June 25, 2021.

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, apply and have been fulfilled. The primary bill sponsor of SB 280 and primary bill sponsor of HB 139 were notified by electronic mail on May 6, 2021.

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/ Robert Lishman  
Robert Lishman  
Rule Reviewer

/s/ Adam Meier  
Adam Meier, Director  
Public Health and Human Services

Certified to the Secretary of State May 18, 2021.