

Final Proposed Filing - Coversheet

Instructions:

In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the "Rule on Rulemaking" adopted by the Office of the Secretary of State, this filing will be considered complete upon filing and acceptance of these forms with the Office of the Secretary of State, and the Legislative Committee on Administrative Rules.

All forms shall be submitted at the Office of the Secretary of State, no later than 3:30 pm on the last scheduled day of the work week.

The data provided in text areas of these forms will be used to generate a notice of rulemaking in the portal of "Proposed Rule Postings" online, and the newspapers of record if the rule is marked for publication. Publication of notices will be charged back to the promulgating agency.

PLEASE REMOVE ANY COVERSHEET OR FORM NOT REQUIRED WITH THE CURRENT FILING BEFORE DELIVERY!

Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I approve the contents of this filing entitled:

Vital Records Rule

/s/ Todd W. Daloz

9/15/22

, on

(signature)

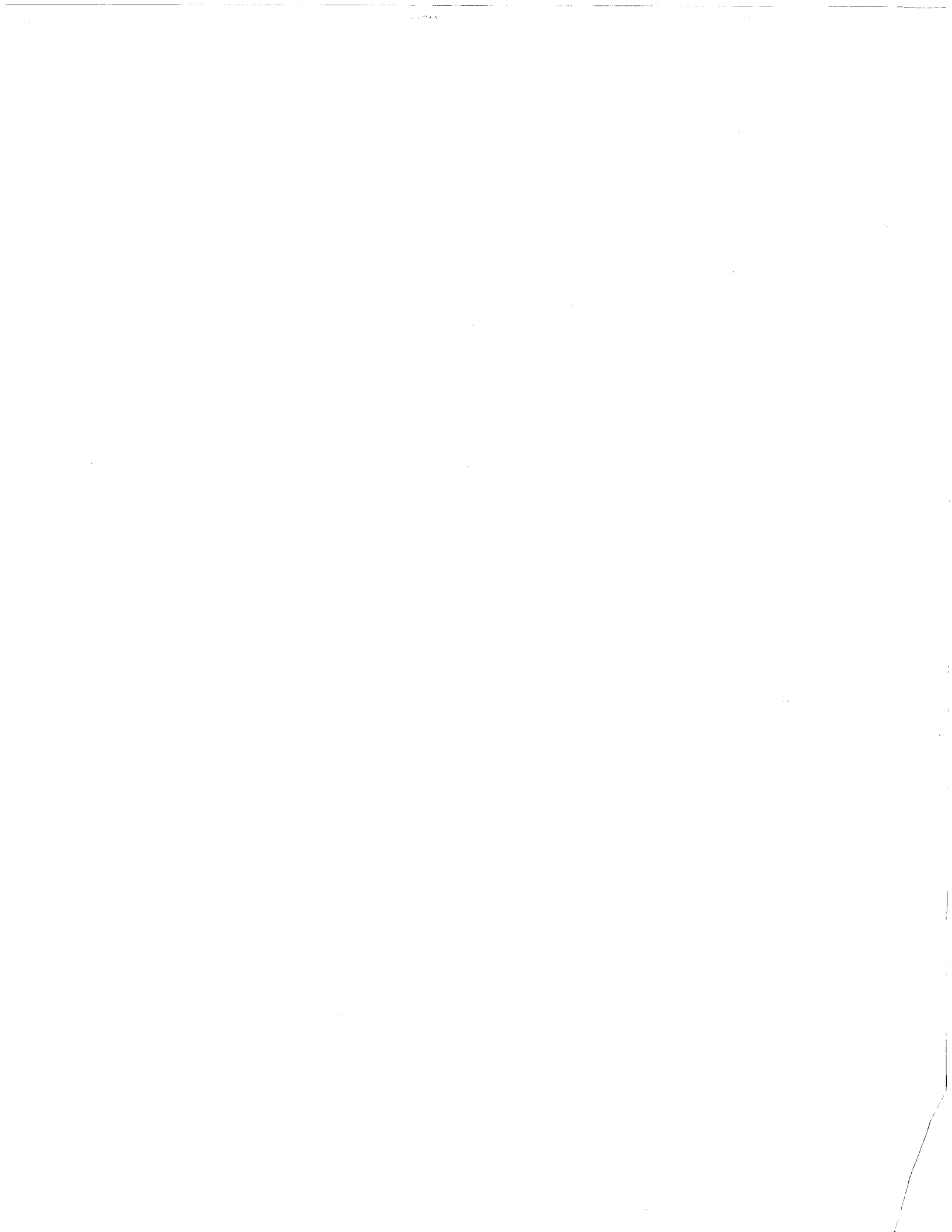
(date)

Printed Name and Title:

Todd W. Daloz
Deputy Secretary
Agency of Human Services

RECEIVED BY: _____

- Coversheet
- Adopting Page
- Economic Impact Analysis
- Environmental Impact Analysis
- Strategy for Maximizing Public Input
- Scientific Information Statement (if applicable)
- Incorporated by Reference Statement (if applicable)
- Clean text of the rule (Amended text without annotation)
- Annotated text (Clearly marking changes from previous rule)
- ICAR Minutes
- Copy of Comments
- Responsiveness Summary



1. TITLE OF RULE FILING:

Vital Records Rule

2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE

22P011

3. ADOPTING AGENCY:

Vermont Department of Health

4. PRIMARY CONTACT PERSON:

(A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).

Name: David Englander

Agency: Department of Health

Mailing Address: 108 Cherry Street, Burlington, VT 05401

Telephone: (802) 863-7282 Fax: (802) 951-1275

E-Mail: ahs.vdhrules@vermont.gov

Web URL *(WHERE THE RULE WILL BE POSTED)*:

<http://www.healthvermont.gov/about-us/laws-regulations/public-comment>

5. SECONDARY CONTACT PERSON:

(A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON).

Name: Natalie Weill

Agency: Department of Health

Mailing Address: 108 Cherry Street, Burlington, VT 05401

Telephone: (802) 863-7280 Fax: (802) 951-1275

E-Mail: ahs.vdhrules@vermont.gov

6. RECORDS EXEMPTION INCLUDED WITHIN RULE:

(DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL; LIMITING ITS PUBLIC RELEASE; OR OTHERWISE, EXEMPTING IT FROM INSPECTION AND COPYING?) No

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

7. LEGAL AUTHORITY / ENABLING LEGISLATION:

(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).



Act 88 (2022) Sec. 2(b), 18 V.S.A. § 5112 (b), and 3 V.S.A § 801(b) (11).

EXPLANATION OF HOW THE RULE IS WITHIN THE AUTHORITY OF THE AGENCY:

Act 88 (2022) Sec. 2(b) states: "Pursuant to 3 V.S.A. chapter 25, the Department shall adopt rules as necessary for the purposes of implementing, administering, or enforcing the requirements of this section."

- 8.
9. THE FILING HAS CHANGED SINCE THE FILING OF THE PROPOSED RULE.
10. THE AGENCY HAS INCLUDED WITH THIS FILING A LETTER EXPLAINING IN DETAIL WHAT CHANGES WERE MADE, CITING CHAPTER AND SECTION WHERE APPLICABLE.
11. SUBSTANTIAL ARGUMENTS AND CONSIDERATIONS WERE NOT RAISED FOR OR AGAINST THE ORIGINAL PROPOSAL.
12. THE AGENCY HAS INCLUDED COPIES OF ALL WRITTEN SUBMISSIONS AND SYNOPSES OF ORAL COMMENTS RECEIVED.
13. THE AGENCY HAS INCLUDED A LETTER EXPLAINING IN DETAIL THE REASONS FOR THE AGENCY'S DECISION TO REJECT OR ADOPT THEM.
14. **CONCISE SUMMARY (150 WORDS OR LESS):**

This rulemaking implements a process for individuals to amend the marker on their birth certificate to reflect the individual's gender identity. Specifically, it does the following:

 - 1) Defines the term "non-binary" to describe the additional gender identities that may be reflected on a birth certificate.
 - 2) Creates a process for registrants to file their Affidavit of Gender Identity with the Department.
15. **EXPLANATION OF WHY THE RULE IS NECESSARY:**

Act 88 (2022), Sec. 2(b) requires the Department to adopt rules for the purposes of implementing, administering, or enforcing the process by which an individual may amend the marker on a birth certificate to reflect the individual's gender identity, including a third non-binary marker.



16. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY:

This rulemaking is not arbitrary because it brings the rule in compliance with law. Act 88 (2022) Sec. 2(b), requiring the Department to adopt rules for the purposes of implementing, administering, or enforcing the process by which an individual may amend the marker on a birth certificate to reflect the individual's gender identity, including a third non-binary marker.

17. LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES AFFECTED BY THIS RULE:

Persons born in Vermont who wish to amend their birth certificate; the Vermont Department of Health Vital Records Office.

18. BRIEF SUMMARY OF ECONOMIC IMPACT (150 WORDS OR LESS):

This rule creates a simplified process that will result in a small economic benefit to the Vital Records Office and an unknown economic benefit to persons wishing to amend the gender markers on their birth certificates.

19. A HEARING WAS HELD.

20. HEARING INFORMATION

(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING, PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION.

Date: 7/22/2022

Time: 01:00 PM

Street Address: 108 Cherry Street, Conference room 2A,
Burlington, VT

Zip Code: 05401

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:



Date:

Time: AM

Street Address:

Zip Code:

21. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING):

7/29/2022

KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE SEARCHABILITY OF THE RULE NOTICE ONLINE).

Vital Records

Birth Certificate

Gender Identity

Registrants

Sex

Gender





VERMONT
DEPARTMENT OF HEALTH

To: Senator Mark McDonald, Chair of the Legislative Committee on Administrative Rules

From: Natalie Weill, Public Health Policy Advisor for Vermont Department of Health

Re: Vital Records Rule

Date: September 14, 2022

Following the filing of the rule for public comment, the Health Department made the following changes to the proposed rule:

The following change was made based on comments received from stakeholders during the public comment period:

1. Section 10.3 and 10.3.1, requiring any person, under of age of 16, to include the signature of a parent or legal guardian on the Affidavit of Gender Identity has been amended for accuracy and accessibility. Accordingly, Section 10.3.1 has been removed and Section 10.3 has been amended to the following:

“To file for an amendment under Section 10.0, registrants shall submit a notarized Affidavit of Gender Identity, signed by the registrant, ~~or and~~ if applicable, the registrant’s parent or legal guardian, ~~the following~~ by mail or in-person to the Vermont Department of Health, Vital Records Office.”

2. Section 10.3.2 and 10.3.2.1, requiring individuals to present identification documents to the Vital Records Office has been removed. Section 10.3 was amended to require a notarized Affidavit of Gender Identity.



280 State Drive - Center Building
Waterbury, VT 05671-1000




OFFICE OF THE SECRETARY
TEL: (802) 241-0440
FAX: (802) 241-0450

JENNEY SAMUELSON
SECRETARY

TODD W. DALOZ
DEPUTY SECRETARY

STATE OF VERMONT
AGENCY OF HUMAN SERVICES

MEMORANDUM

TO: Jim Condos, Secretary of State
FROM: Jenney Samuelson, Secretary, Agency of Human Services 
DATE: April 1, 2022
SUBJECT: Signatory Authority for Purposes of Authorizing Administrative Rules

I hereby designate Deputy Secretary of Human Services Todd W. Daloz as signatory to fulfill the duties of the Secretary of the Agency of Human Services as the adopting authority for administrative rules as required by Vermont's Administrative Procedure Act, 3 V.S.A. § 801 et seq.

Cc: Todd W. Daloz



Adopting Page

Instructions:

This form must accompany each filing made during the rulemaking process:

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with proposed and final proposed filings. Filing an annotated paragraph or page of a larger rule is not sufficient. Annotation must clearly show the changes to the rule.

When possible, the agency shall file the annotated text, using the appropriate page or pages from the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

1. TITLE OF RULE FILING:

Vital Records Rule

2. ADOPTING AGENCY:

Vermont Department of Health

3. TYPE OF FILING (*PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU BASED ON THE DEFINITIONS PROVIDED BELOW*):

- **AMENDMENT** - Any change to an already existing rule, even if it is a complete rewrite of the rule, it is considered an amendment if the rule is replaced with other text.
- **NEW RULE** - A rule that did not previously exist even under a different name.
- **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

This filing is **AN AMENDMENT OF AN EXISTING RULE** .

4. LAST ADOPTED (*PLEASE PROVIDE THE SOS LOG#, TITLE AND EFFECTIVE DATE OF THE LAST ADOPTION FOR THE EXISTING RULE*):

SOS #21P-037, Vital Records Rule effective 7/1/2022.





INTERAGENCY COMMITTEE ON ADMINISTRATIVE RULES (ICAR) MINUTES

Meeting Date/Location: June 13, 2022, virtually via Microsoft Teams

Members Present: Chair Douglas Farnham, Brendan Atwood, Jared Adler, Jennifer Mojo, Diane Sherman, Mike Obuchowski and Donna Russo-Savage

Members Absent: John Kessler and Diane Bothfeld

Minutes By: Melissa Mazza-Paquette

- 2:01 p.m. meeting called to order, welcome and introductions.
- Committee discussion on process improvements is scheduled for the August meeting to allow for participation from all members.
- Review and approval of minutes from the May 9, 2022 meeting.
- No additions/deletions to agenda. Agenda approved as drafted.
- Note: An emergency rule titled 'Vital Records Emergency Rule', provided by the Agency of Human Services, Department of Health, was supported by ICAR Chair Farnham on May 16, 2022. This rulemaking implements a process for individuals to amend the marker on their birth certificate to reflect the individual's gender identity. Specifically, it does the following: 1) Defines the term "non-binary" to describe the additional gender identities that may be reflected on a birth certificate. 2) Creates a process for registrants to file their Affidavit of Gender Identity with the Department.
- One public comment made by Venn [Saint Wilder].
- Presentation of Proposed Rules on pages 2-10 to follow.
 1. 2021 Vermont Plumbing Rules, Department of Public Safety & Plumbers Examining Board, page 2
 2. Vital Records Rule, Agency of Human Services, Department of Health, page 3
 3. Rule 4.600 Definition of Electric Transmission Facility in 30 V.S.A. § 248, Public Utility Commission, page 4
 4. Health Benefits Eligibility and Enrollment Rule, General Provisions and Definitions (Part 1), Agency of Human Services, page 5
 5. Health Benefits Eligibility and Enrollment Rule, Eligibility Standards (Part 2), Agency of Human Services, page 6
 6. Health Benefits Eligibility and Enrollment Rule, Nonfinancial Eligibility Requirements (Part 3), Agency of Human Services, page 7
 7. Health Benefits Eligibility and Enrollment Rule, Financial Methodologies (Part 5), Agency of Human Services, page 8
 8. Health Benefits Eligibility and Enrollment Rule, Eligibility-and-Enrollment Procedures (Part 7), Agency of Human Services, page 9
 9. Administrative Rules of the Board of Nursing, Secretary of State, Office of Professional Regulation, page 10
- Next scheduled meeting is Monday, July 11, 2022 at 2:00 p.m.
- 3:25 p.m. meeting was paused for a 15-minute break
- Add discussion of strike-all rules for transparency at a future meeting as time allows.
- 3:50 p.m. meeting adjourned.



Proposed Rule: Vital Records Rule, Agency of Human Services, Department of Health

Presented By: David Englander

Motion made to accept the rule by Diane Sherman, seconded by Jen Mojo, and passed unanimously except for Brendan Atwood who abstained, with the following recommendations:

1. Public Input Maximization Plan, #3: Include intention to hold a public hearing(s).
2. Annotated rule text, #10.4: Clarify who is responsible by adding language such as 'the department' before 'shall...' if appropriate.

Economic Impact Analysis

Instructions:

In completing the economic impact analysis, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule; estimates the costs and benefits for each category of people enterprises and government entities affected by the rule; compares alternatives to adopting the rule; and explains their analysis concluding that rulemaking is the most appropriate method of achieving the regulatory purpose. If no impacts are anticipated, please specify "No impact anticipated" in the field.

Rules affecting or regulating schools or school districts must include cost implications to local school districts and taxpayers in the impact statement, a clear statement of associated costs, and consideration of alternatives to the rule to reduce or ameliorate costs to local school districts while still achieving the objectives of the rule (see 3 V.S.A. § 832b for details).

Rules affecting small businesses (excluding impacts incidental to the purchase and payment of goods and services by the State or an agency thereof), must include ways that a business can reduce the cost or burden of compliance or an explanation of why the agency determines that such evaluation isn't appropriate, and an evaluation of creative, innovative or flexible methods of compliance that would not significantly impair the effectiveness of the rule or increase the risk to the health, safety, or welfare of the public or those affected by the rule.

1. TITLE OF RULE FILING:

Vital Records Rule

2. ADOPTING AGENCY:

Vermont Department of Health

3. CATEGORY OF AFFECTED PARTIES:

LIST CATEGORIES OF PEOPLE, ENTERPRISES, AND GOVERNMENTAL ENTITIES POTENTIALLY AFFECTED BY THE ADOPTION OF THIS RULE AND THE ESTIMATED COSTS AND BENEFITS ANTICIPATED:

Persons born in Vermont who wish to amend their gender-markers on their birth certificates: The rule creates a simplified process that results in a cost-savings for these individuals.

The Vermont Department of Health Vital Records Office:
There is no cost to the Department to establish the Affidavit of Gender Identity and to update the

electronic Statewide Registration System to include a non-binary option on vital records. The simplified process will provide a small economic benefit in government efficiency.

4. IMPACT ON SCHOOLS:

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS CLEARLY STATING ANY ASSOCIATED COSTS:

No impact.

5. ALTERNATIVES: CONSIDERATION OF ALTERNATIVES TO THE RULE TO REDUCE OR AMELIORATE COSTS TO LOCAL SCHOOL DISTRICTS WHILE STILL ACHIEVING THE OBJECTIVE OF THE RULE.

No impact.

6. IMPACT ON SMALL BUSINESSES:

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON SMALL BUSINESSES (EXCLUDING IMPACTS INCIDENTAL TO THE PURCHASE AND PAYMENT OF GOODS AND SERVICES BY THE STATE OR AN AGENCY THEREOF):

No impact.

7. SMALL BUSINESS COMPLIANCE: EXPLAIN WAYS A BUSINESS CAN REDUCE THE COST/BURDEN OF COMPLIANCE OR AN EXPLANATION OF WHY THE AGENCY DETERMINES THAT SUCH EVALUATION ISN'T APPROPRIATE.

Not applicable.

8. COMPARISON:

COMPARE THE IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING SEPARATE REQUIREMENTS FOR SMALL BUSINESS:

This rulemaking is necessary to ensure compliance and consistency with statute. There is no alternative to this rule.

9. SUFFICIENCY: DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.

The Department has provided the information that is available.

Environmental Impact Analysis

Instructions:

In completing the environmental impact analysis, an agency analyzes and evaluates the anticipated environmental impacts (positive or negative) to be expected from adoption of the rule; compares alternatives to adopting the rule; explains the sufficiency of the environmental impact analysis. If no impacts are anticipated, please specify "No impact anticipated" in the field.

Examples of Environmental Impacts include but are not limited to:

- Impacts on the emission of greenhouse gases
- Impacts on the discharge of pollutants to water
- Impacts on the arability of land
- Impacts on the climate
- Impacts on the flow of water
- Impacts on recreation
- Or other environmental impacts

1. TITLE OF RULE FILING:

Vital Records Rule

2. ADOPTING AGENCY:

Vermont Department of Health

3. GREENHOUSE GAS: *EXPLAIN HOW THE RULE IMPACTS THE EMISSION OF GREENHOUSE GASES (E.G. TRANSPORTATION OF PEOPLE OR GOODS; BUILDING INFRASTRUCTURE; LAND USE AND DEVELOPMENT, WASTE GENERATION, ETC.):*
No impact.

4. WATER: *EXPLAIN HOW THE RULE IMPACTS WATER (E.G. DISCHARGE / ELIMINATION OF POLLUTION INTO VERMONT WATERS, THE FLOW OF WATER IN THE STATE, WATER QUALITY ETC.):*
No impact.

5. LAND: *EXPLAIN HOW THE RULE IMPACTS LAND (E.G. IMPACTS ON FORESTRY, AGRICULTURE ETC.):*
No impact.

6. RECREATION: *EXPLAIN HOW THE RULE IMPACT RECREATION IN THE STATE:*
No impact.

7. **CLIMATE:** *EXPLAIN HOW THE RULE IMPACTS THE CLIMATE IN THE STATE:*
No impact.
8. **OTHER:** *EXPLAIN HOW THE RULE IMPACT OTHER ASPECTS OF VERMONT'S ENVIRONMENT:*
No impact.
9. **SUFFICIENCY:** *DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.*
Because there is no impact, this analysis is sufficient.

Public Input Maximization Plan

Instructions:

Agencies are encouraged to hold hearings as part of their strategy to maximize the involvement of the public in the development of rules. Please complete the form below by describing the agency's strategy for maximizing public input (what it did do, or will do to maximize the involvement of the public).

This form must accompany each filing made during the rulemaking process:

1. TITLE OF RULE FILING:

Vital Records Rule

2. ADOPTING AGENCY:

Vermont Department of Health

3. PLEASE DESCRIBE THE AGENCY'S STRATEGY TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE, LISTING THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO COMPLY WITH THAT STRATEGY:

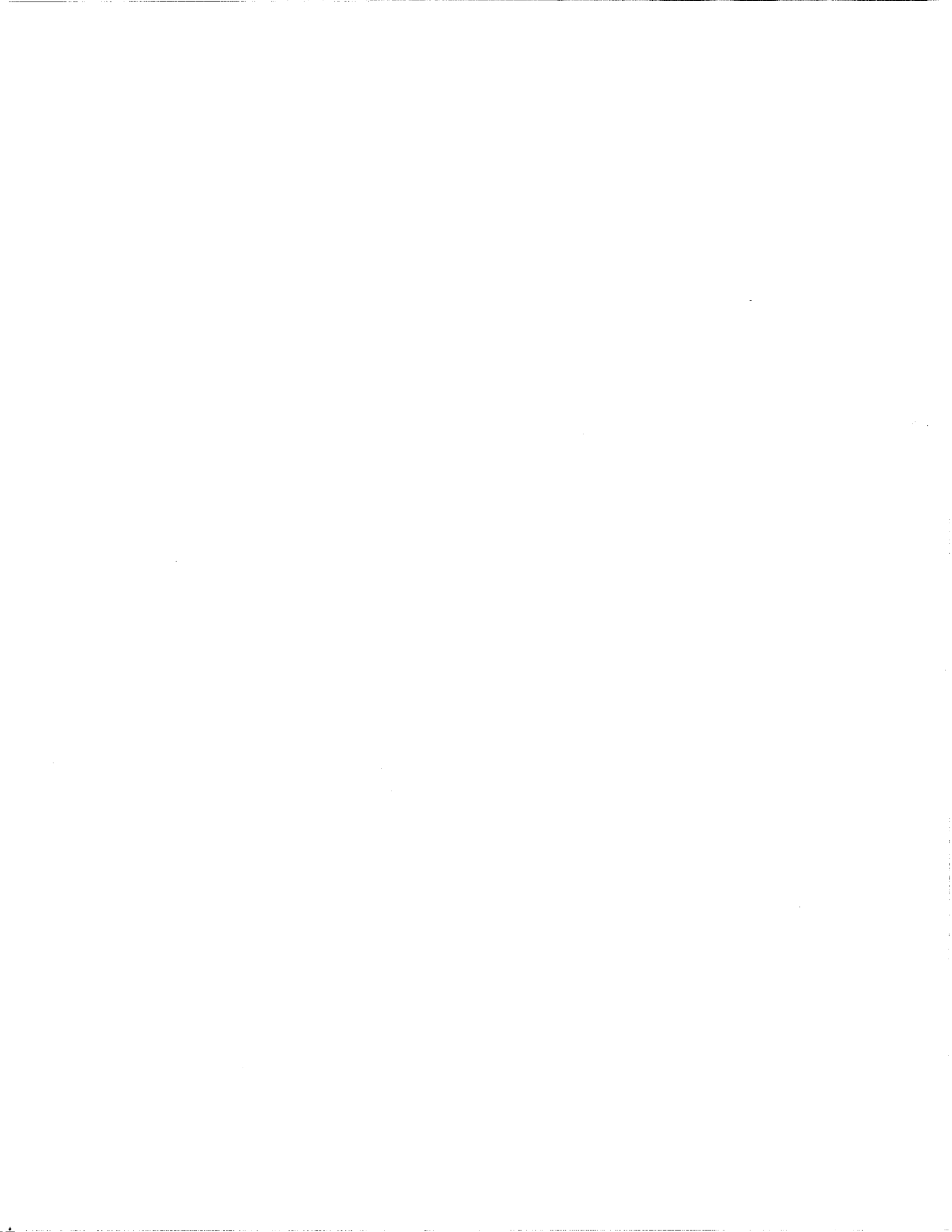
The rule is posted on the Department of Health's website:

<https://www.healthvermont.gov/about-us/laws-regulations/public-comment>

The Department held a public hearing.

4. BEYOND GENERAL ADVERTISEMENTS, PLEASE LIST THE PEOPLE AND ORGANIZATIONS THAT HAVE BEEN OR WILL BE INVOLVED IN THE DEVELOPMENT OF THE PROPOSED RULE:

The Department consulted with the LGBTQIA+ Alliance of Vermont, the Pride Center of Vermont, the Office of Racial Equity, and other individual stakeholders in drafting the rule.



My name is Venn Sage Wylder, my pronouns are they/them/their, and my Affidavit of Gender Identity was the first received by State Registrar Jean DeCell.

I'll start by expressing appreciation for all the work that has gone into getting us here today. This is not the first step in the road to equity, and it won't be the last.

Although I've been working on getting this specific policy change implemented for the past four and a half years, I'm able to do so because of all those who have gone before. My hope is that by implementing this rule we make it easier for others to lead us toward equity in the future.

Already, this rule has begun its work. Members of the House Human Services Committee heard, in testimony on H.628, that gender-affirming fundamental identity documents save lives. They do more than that. Since submitting my Affidavit on July 1st, I've made enormous progress in my mental and emotional health. Since receiving the updated document, I've reconnected with parts of myself that I've been out of contact with for nearly a decade. I feel a quality of safety in my interactions with others that's been missing from my life since shortly before I recognized myself as non-binary. Knowing the State has my back in this one small way changes everything.

All that said, I do have four changes to suggest going forward. First, two for the proposed rule:

When I handed my Affidavit to State Registrar Jean DeCell, she told me that the notarization of the Affidavit makes the ID requirement in the rule extraneous. Thus, I recommend (1) **striking rule 10.3.2, requiring submission of identification documents (or copies of the same).** 11.1

Before I got involved in the campaign to create this path to birth certificate amendments in Vermont, and the non-binary option, I submitted a court order from Oregon — my residence at the time — affirming my non-binary gender. These rules don't provide for that as an alternative to the Affidavit. If someone has a court order like that from the jurisdiction in which they live, a certified copy of that order should suffice. Thus I recommend (2) **adding, as an alternative to the Affidavit, "a court order that adequately identifies the registrant and indicates the sex or gender to which the registrant's birth certificate should be corrected."** 11.2

My other two notes are about the form of the Affidavit, based on my experience filling it out:

Each time I marked the form to indicate the sex I was assigned at birth, I felt wretched. I understand, based on my conversation with the State Registrar about this, that it can be challenging to administer changes like this, especially when a registrant might submit multiple forms over time, and those might cross on the desks of the people implementing the changes. But can we do something different, both to reduce harm and to reduce barriers to access, while preventing action on out-dated instructions? I'd recommend (3) **a note in the database indicating the date of the notarized Affidavit or certified court order that backed the most recent change, so subsequently received submissions with earlier dates can be disregarded.** 11.3

Filling out the form, I was also confused — do I use my legally-adopted married name, my deadname from my original birth certificate, or the gender affirming name I submitted to VDH in 2018 on the court order that they didn't fully implement? And which goes where? I'm fortunate to have been able to call on VDH staff to ask for assistance; I'm sure they'd be happy to help anyone else with the same questions. But with a page of instructions, there might be less need. Thus, I recommend (4) **adding a page of instructions, an FAQ, and a phone number & email address people can contact for assistance.** 11.4

Thank you for your time and attention.

Public Comment Responsiveness Summary for the Vital Records Rule

The Department of Health (Department) held a public hearing for the proposed Vital Records Rule on July 22, 2022, in Burlington, Vermont, with a call-in option via Microsoft Teams. Written comments were accepted through July 29, 2022. The following is a summary of comments received from the public and the Department's response to each comment. Comments of a similar or consistent nature have been consolidated and responded to accordingly.

1. **Comment:** A commenter recommended "striking rule 10.3.2 requiring submission of identification documents (or copies of the same)" because "the notarization of the Affidavit makes the ID requirement in the rule extraneous."

Response: The Department agrees that the notarization of the Affidavit of Gender Identity sufficiently verifies the identity of the individual. Accordingly, the requirements of Sections 10.3.2 and 10.3.2.1 for individuals to present identification documents to the Vital Records Office have been removed.

2. **Comment:** A commenter recommended that the Department accept an alternative to the Affidavit of Gender Identity to amend one's gender marker. The commenter stated, "a court order that adequately identifies the registrant and indicates the sex or gender to which the registrant's birth certificate should be corrected" should be considered as another acceptable document to amend one's gender identity on a birth certificate.

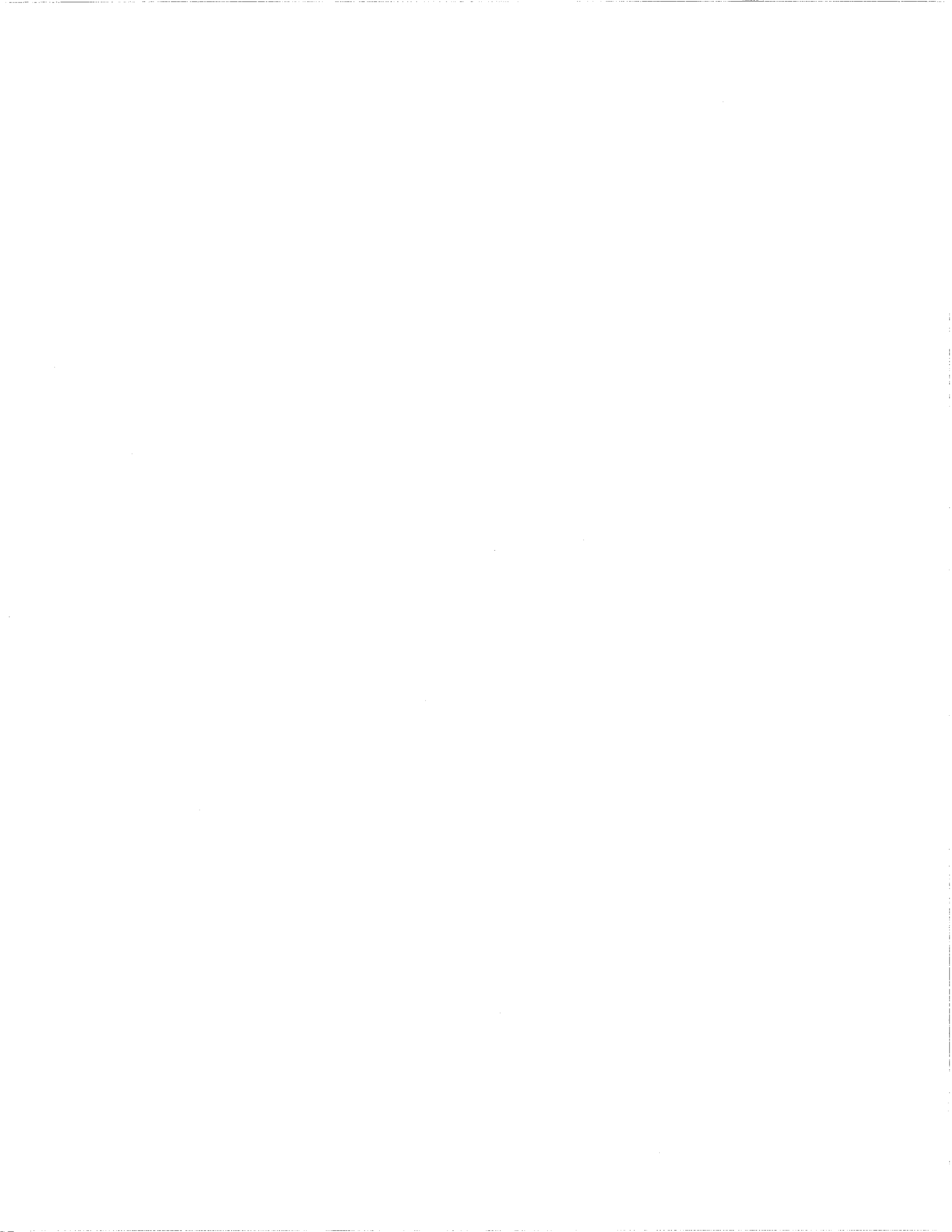
Response: While there may be several plausible means of affirming one's identity, including a court order, the Department prioritized the creation of a simple, accessible, and singular process by which any Vermonter could amend their gender identity on their birth certificate. The current Affidavit of Gender Identity sufficiently provides for such a process, and such a requirement would increase complexity.

3. **Comment:** A commenter recommended that the Department make "a note in the database indicating the date of the notarized Affidavit or certified court order that backed the most recent change, so subsequently received submissions with earlier dates can be disregarded." The commenter states that this change would "reduce harm and...reduce barriers to access..."

Response: Section 10.4 of the rule requires that a new certificate issued pursuant to a gender identity change request be substituted for the original birth certificate in official records and that the new certificate "shall not show that a change in name or sex, or both, has been made." This protects the privacy of Vermonters, enabling them to maintain full discretion over the disclosure of their own gender identification. Accordingly, the Department intends to maintain this requirement.

4. **Comment:** A commenter recommended "adding a page of instructions, an FAQ, and a phone number & email address people can contact for assistance."

Response: The Affidavit of Gender Identity includes instructions, and the Department's website lists the phone number and email address for the Vital Records office. The Department will continue to assess the value of developing additional resources, including an FAQ, following the implementation of the rule.



Chapter 4– Health Surveillance

Subchapter 7 – Vital Records

Vital Records Rule

1.0 Authority

This rule is adopted pursuant to 18 V.S.A. § 5000 (e)(8) and (f) and Act 88 (2022).

2.0 Purpose

The purpose of this rule is to establish the specific requirements for obtaining, creating, amending, and storing birth and death certificates in Vermont.

3.0 Definitions

3.1 “Affidavit of Gender Identity” means the form published by the Department that is used to self-attest to an individual’s gender identity for the purpose of amending a birth certificate. The affidavit must be signed by the registrant and if applicable, the registrant’s parent or legal guardian.

3.13.2 “Affidavit of Homeless Status” means the form published by the Department that can be used to verify an individual’s status as a person experiencing homelessness for the purposes of obtaining a certified birth certificate. The affidavit must be signed by both the applicant and the homeless services provider. The affidavit is available on the Department’s website.

3.23.3 “Alternate means of identification” means two documents (exempting 3.34.12 and 3.34.13 when only one form of identification is needed) that between them shall contain a current address and a signature of the applicant. Alternate acceptable documents are:

3.2.13.3.1 Employment Identification Card with photo, accompanied by a pay stub or U.S. Internal Revenue W-2 form;

3.2.23.3.2 School, university, or college identification card with photo, accompanied by a report card or other proof of current school enrollment;

3.2.33.3.3 Federal or state identification issued by departments, bureaus, or agencies of corrections or prisons;

3.2.43.3.4 Social Security/Medicare Card that contains the bearer’s signature;

3.2.53.3.5 Pilot’s License;

~~3.2.6~~3.3.6 Car registration or title with current address;

~~3.2.7~~3.3.7 U.S. Selective Service Card;

~~3.2.8~~3.3.8 Voter Registration Card;

~~3.2.9~~3.3.9 Filed Federal tax form that contains current address and signatures;

~~3.2.10~~3.3.10 Bank statement, property or utility bill (e.g. gas, water, electric, sewer, phone) with current address;

~~3.2.11~~3.3.11 U.S. or state court documents with current address;

~~3.2.12~~3.3.12 Documentation provided by the Vermont Department of Corrections substantiating the identity of the eligible person;

~~3.2.13~~3.3.13 A valid State of Vermont Employee identification –when the application for a birth and/or death certificate is a bona fide request made within the scope of employment with the State;

~~3.2.14~~3.3.14 A receipt from a licensed healthcare provider with name and current address; or

~~3.2.15~~3.3.15 First class mail with name and current address.

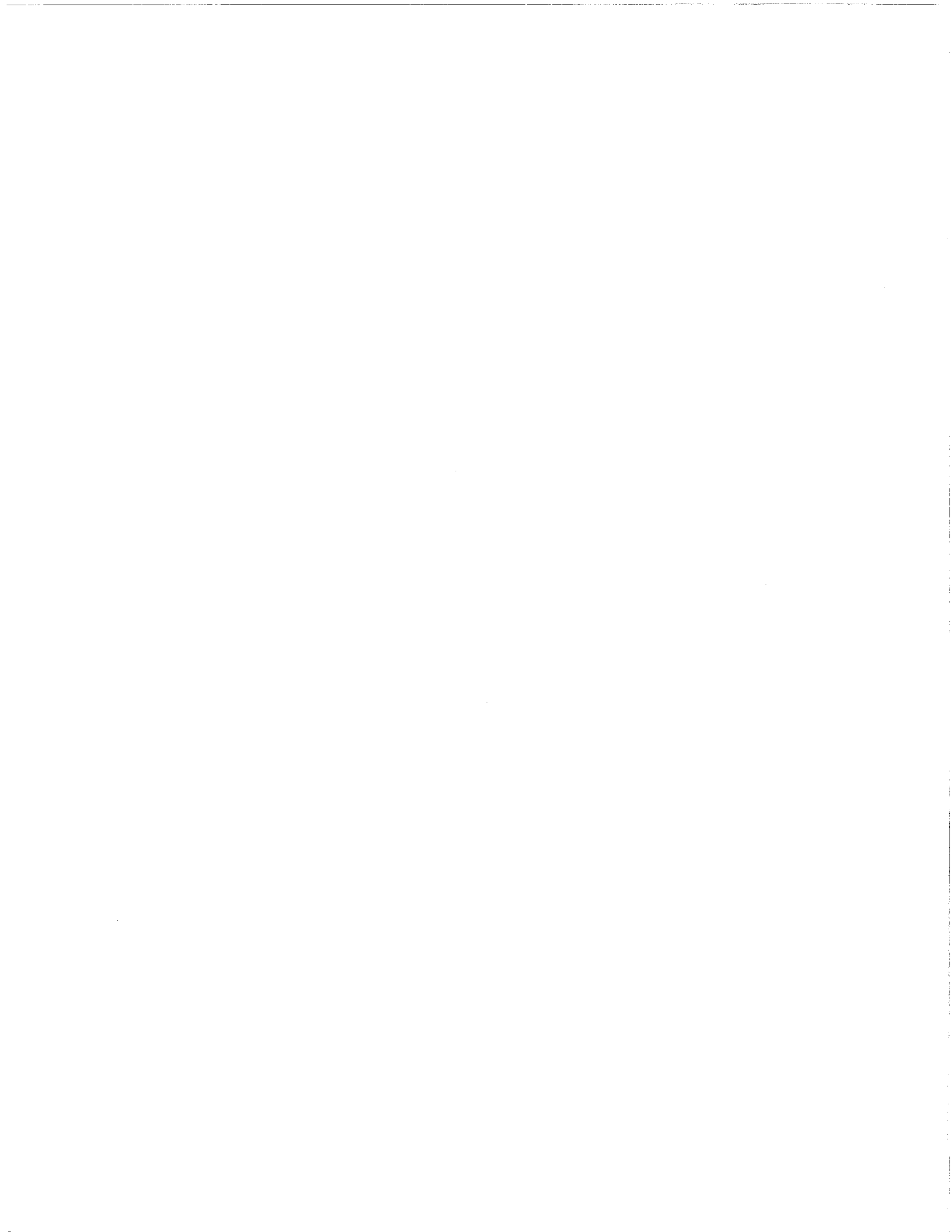
~~3.3.4~~ “Applicant” means an eligible party seeking to obtain the vital records of a registrant.

~~3.5~~ “Custodian” means any person or entity who maintains official copies of vital records for access and inspection by the public, or any lawful purpose, including the Department of Health, Vermont State Archives and Records Administration and town clerks.

~~3.4~~3.6 “Department” means the Vermont Department of Health.

~~3.5~~3.7 “Eligible party” means the same as defined in 18 V.S.A. § 5016(b)(2):

~~3.5.1~~3.7.1 The registrant; or their spouse, child, grandchild, parent, sibling, grandparent, or guardian; a person petitioning to open a decedent's estate; a court- appointed executor or administrator; or the legal representative of any of these;



~~3.5.2~~3.7.2 A specific person pursuant to a court order finding that a noncertified copy is not sufficient for the applicant's legal purpose and that a certified copy of the birth or death certificate is needed for the determination or protection of a person's right;

~~3.5.3~~3.7.3 An employee of a public agency authorized by the State Registrar as defined in 1 V.S.A § 317; or

~~3.5.4~~3.7.4 In the case of a death certificate only, additionally to:

~~3.5.4.1~~3.7.4.1 the individual with authority for final disposition as provided 18 V.S.A. § 5227, or a funeral home or crematorium acting on the individual's behalf;

~~3.5.4.2~~3.7.4.2 the Social Security Administration;

~~3.5.4.3~~3.7.4.3 the U.S. Department of Veterans Affairs; or

3.7.4.4 the deceased's insurance carrier, if such carrier provides benefits to the decedent's survivors or beneficiaries.

3.8 "Gender marker" reflected on a birth certificate as "Sex" means:

3.8.1 "F" to represent female;

3.8.2 "M" to represent male; and

3.8.3 "X" to represent non-binary.

~~3.6~~3.9 "Generational identifier" means JR, SR, or numerals to designate the number of generations. Generational identifiers may not take the form of commonly conferred academic honorifics such as, but not limited to: MD, JD, DO, Esq., BA, BS, MA, MS, or PhD, or other designations not commonly used as generational identifiers.

~~3.7~~3.10 "Homeless services provider" means:

~~3.7.1~~3.10.1A governmental or nonprofit agency receiving federal, state, or municipal funding to provide services to a person experiencing homelessness or that is otherwise sanctioned to provide those services

by a local homeless continuum of care organization.

~~3.7.2~~3.10.2 An attorney licensed to practice law in Vermont and who is representing a client for whom the request for a certified birth certificate is being made.

~~3.7.3~~3.10.3 A local educational agency liaison for homeless children and youth, or a school social worker.

~~3.7.4~~3.10.4 A human services provider or public social services provider funded by the State of Vermont to provide homeless children or youth services, health services, mental or behavioral health services, substance use disorder services, public assistance, or employment services.

~~3.83.11~~ "Issuing agent" means a town clerk or duly authorized representative of the State Registrar who issues certified and noncertified copies of vital records.

3.12 "Non-binary" means a person whose gender identity is not exclusively male or female, including, but not limited to, a person whose gender identity is intersex, agender, amalggender, androgynous, bigender, demigender, genderfluid, genderqueer, gender non-conforming, neutrois, non-binary, pangender, third sex, transgender, Two-Spirit, or otherwise unspecified by the person.

~~3.93.13~~ "Person experiencing homelessness" and "Homeless," mean the same as the definition found in 42 USC § 11302 for a "homeless individual".

~~3.103.14~~ "Registrant" means the individual who is the subject of a vital record event certificate.

~~3.113.15~~ "Secure facility" means a building or room equipped with locks or other security devices that does not permit access during non-working or non-business hours.

~~3.123.16~~ "Valid government-issued identification" means a document that shall contain an expiration date that has not passed, a photograph, a current address, a signature and a unique number or barcode such as a driver's license, or valid passport, assigned to the person. The following forms of government-issued identification are acceptable:

~~3.12.13.16.1~~ 3.16.1 United States issued Driver's License or Identification card;

~~3.12.23.16.2~~ United States Territories Driver's License or Identification card;

~~3.12.33.16.3~~ Tribal Identification Card that contains the bearer's signature;

~~3.12.43.16.4~~ U.S. Military Identification Card that contains the bearer's signature;

~~3.12.53.16.5~~ Passport issued by the United States, or by a foreign country recognized by the United States government;

~~3.12.63.16.6~~ Visa issued by the United States and that is included within a passport and the bearer's signature is on the passport and not on the Visa;

~~3.12.73.16.7~~ U.S. Resident Alien Card, also known as the U.S. Green Card or the U.S. Permanent Resident Card (Form I-551); or U.S. Employment Authorization Document/ Card (Form I-765 or successor form).

4.0 Documents Needed to Obtain a Birth or Death Certificate

4.1 An applicant is required to provide a valid government-issued identification document or alternate means of identification and must present the identification at time of signing the Vermont application for a certified copy of a birth or death certificate.

4.2 An applicant may establish their identity by providing a minimum of two alternate means of identification (exempting ~~3.34.12~~ and ~~3.34.13~~ when only one form of identification is needed). The Office of Vital Records may request additional evidence as necessary for the positive identification of the applicant.

4.24.3 A person experiencing homelessness may establish their identity necessary to be eligible to receive a certified birth certificate by providing a completed Affidavit of Homeless Status, available on the Department's website. The Affidavit must be signed by both the applicant and the homeless services provider. The Office of Vital Records may request additional documentation as necessary for the positive identification of the applicant.

5.0 Applications for Certified Copies of Birth and Death Certificates

5.1 The Vermont application for a certified copy of birth or death certificate must be submitted by an eligible party to:

5.1.1 the Vermont Office of Vital Records;



- 5.1.2 the Vermont State Archives and Records Administration;
- 5.1.3 a statutorily authorized issuing agent, such as town clerk's office;
- 5.1.4 a contractor of the State of Vermont that is providing application; or processing services on behalf of the Vermont Office of Vital Records.

6.0 Certification of Birth and Death Certificates by Town Clerks and Their Designees

6.1 Town clerks and their designees shall certify a birth or death certificate copy using one of the following methods:

- 6.1.1 Use of a town seal that does not include the town clerk's name, and ensures all documents are signed by either the town clerk, assistant town clerk, or another designated assistant clerk pursuant to state statute; or
- 6.1.2 Use of a town seal that includes the town clerk's name, and ensures all documents using that seal are signed by the town clerk whose name is on the seal.

7.0 Issuance of Certified Copies of Births and Deaths During a Declared State of Emergency or Other Disruption

7.1 The State Registrar may temporarily suspend the requirement for issuing agents to utilize the statewide registration system for the issuance of certified copies of birth and death certificates. The reasons for a temporary suspension are limited to:

- 7.1.1 A declared state of emergency that covers the State of Vermont when the period has exceeded 48 hours;
- 7.1.2 A technical event with the statewide registration system that results in the system being inaccessible to issuing agents for a period that exceeds 48 hours.

7.2 During a period in which a temporary suspension has been issued, the State Registrar shall provide instruction to the issuing agents for the methods to be used to issue and track all certified copies, and for later recording in the statewide registration system when service has been restored.

8.0 Physical Security Requirements for Creation and Storage of Birth and Death Certificates

8.1 Activities to support the creation, storage, and issuance of certified copies of Vermont birth and death certificates shall occur in secure, government-operated



buildings. The area of the building that houses the Vermont birth and death certificates, and materials utilized to create, modify, or access the certificates, and the computers used to access the statewide registration system, shall meet the following requirements:

- 8.1.1 Contains appropriate sensor, warning systems, or controls in place to monitor for fire, smoke, or other emergencies;
- 8.1.2 Contains a fire suppression method, which may be dry- or wet-suppression, and/or fire extinguishers;
- 8.1.3 Is a secure facility;
- 8.1.4 Employee workspace is separated from the public, such as by service counter, service window, locked door, or other physical barrier;
- 8.1.5 Non-employees, such as, but not limited to, visitors, vendors, delivery personnel, and cleaning staff, must identify themselves to the town clerk or their designee, and request access to the space that contains the birth and death certificate materials, the certificates themselves, and/or the computers used to access the statewide registration system, providing a valid and reasonable reason for such access. These non-employees shall be escorted to the designated area. If cleaning is done during nonworking hours, only preapproved cleaning personnel shall be permitted access to the space that contains the birth and death certificate materials, the certificates themselves, and/or the computers used to access the statewide registration system;
- 8.1.6 All materials used for certification of the birth and death certificates, such as, but not limited to, equipment (computers, printers, town seal), security paper, and any other documents or confidential files/records, shall be locked in a secure area or cabinets accessible only to the town clerk and their designees;
- 8.1.7 Visitors shall be accompanied when such visitors may have access to the materials used for certification of birth and death certificates, or access to the statewide registration system.

- 8.2 If an existing government-operated building does not have a fireproof safe or vault as specified in 18 V.S.A. § 5001(b), the town clerk shall ensure that these rules are complied with and confirm in writing to the State Registrar that all reasonable precautions and safeguards have been implemented to protect the birth and death certificate materials, the birth and death certificates, and the computer



used to access the statewide registration system.

8.3 The public shall be allowed access to view or inspect birth and death certificates stored at issuing agent's offices during the standard business hours of the office. Issuing agents may implement reasonable precautions to protect the certificates from potential harm or theft, such as, but not limited to:

8.3.1 Monitoring visitors;

8.3.2 Requiring visitors to view/inspect certificates at a designated table or office;

8.3.3 Retrieving only the birth and death certificates requested by the visitor rather than providing unlimited access to all certificates;

8.3.4 Requiring visitors to sign in and out when requesting access to birth and death certificates; and/or

8.3.5 Requiring visitors to show the contents of any bags, briefcases, or other storage methods prior to departing the office.

9.0 Criteria for Acceptance of Child's Name on Birth Certificates

9.1 In order to be valid, names on birth certificates shall:

9.1.1 Not contain pictographs or ideographs or writing that is not part of the standard twenty-six letter English alphabet;

9.1.2 Not contain symbols other than:

9.1.2.1 Numerals used for generational identifiers;

9.1.2.2 Common punctuation such as hyphens for hyphenated names, apostrophes used as part of a given name or surname, and periods in generational identifiers or when an initial or abbreviation is used as part of a name; or

9.1.2.3 Special characters that are commonly used, such as accent marks and tildes.

9.1.3 Not exceed a total of 50 characters in length for each of First, Middle, and Last Name. The count of maximum allowable characters shall



include hyphens, apostrophes, and periods when used as part of the name.

9.1.4 Contain a last name.

9.1.5 Contain no more than one generational identifier after the last name.

10.0 Amending a Gender Marker on a Birth Certificate

10.1 A registrant born in Vermont may amend the gender marker on their birth certificate.

~~9.1.6~~ **10.1.1 Any person 16 years or older may amend their gender marker.**

10.1.2 Any person under the age of 16 may amend their gender marker with signed consent from a parent or legal guardian.

10.2 A registrant may amend their gender marker to reflect their identity through self-attestation by filing the Affidavit of Gender Identity available on the Department's website.

10.3 To file for an amendment under Section 10.0, registrants shall submit a notarized Affidavit of Gender Identity, signed by the registrant, or and-if applicable, the registrant's parent or legal guardian, the following by mail or in-person to the Vermont Department of Health, Vital Records Office.:

~~10.3.1 A notarized Affidavit of Gender Identity, signed by the registrant, or and if applicable, the registrant's parent or legal guardian;~~
~~and~~
~~A valid government issued identification or alternate means of identification.~~

~~Submissions by mail must contain a photocopy of a valid government issued identification or alternate means of identification.~~

9.210.4A new certificate issued pursuant to this section shall be substituted for the original birth certificate in official records. The new certificate shall not show that a change in name or sex, or both, has been made.

Clean Copy

Chapter 4– Health Surveillance

Subchapter 7 – Vital Records

Vital Records Rule

1.0 Authority

This rule is adopted pursuant to 18 V.S.A. § 5000 (e)(8) and (f) and Act 88 (2022).

2.0 Purpose

The purpose of this rule is to establish the specific requirements for obtaining, creating, amending, and storing birth and death certificates in Vermont.

3.0 Definitions

3.1 “Affidavit of Gender Identity” means the form published by the Department that is used to self-attest to an individual’s gender identity for the purpose of amending a birth certificate.

3.2 “Affidavit of Homeless Status” means the form published by the Department that can be used to verify an individual’s status as a person experiencing homelessness for the purposes of obtaining a certified birth certificate.

3.3 “Alternate means of identification” means two documents (exempting 3.3.12 and 3.3.13 when only one form of identification is needed) that between them shall contain a current address and a signature of the applicant. Alternate acceptable documents are:

3.3.1 Employment Identification Card with photo, accompanied by a pay stub or U.S. Internal Revenue W-2 form;

3.3.2 School, university, or college identification card with photo, accompanied by a report card or other proof of current school enrollment;

3.3.3 Federal or state identification issued by departments, bureaus, or agencies of corrections or prisons;

3.3.4 Social Security/Medicare Card that contains the bearer’s signature;

3.3.5 Pilot’s License;

3.3.6 Car registration or title with current address;



- 3.3.7 U.S. Selective Service Card;
 - 3.3.8 Voter Registration Card;
 - 3.3.9 Filed Federal tax form that contains current address and signatures;
 - 3.3.10 Bank statement, property or utility bill (e.g. gas, water, electric, sewer, phone) with current address;
 - 3.3.11 U.S. or state court documents with current address;
 - 3.3.12 Documentation provided by the Vermont Department of Corrections substantiating the identity of the eligible person;
 - 3.3.13 A valid State of Vermont Employee identification when the application for a birth and/or death certificate is a bona fide request made within the scope of employment with the State;
 - 3.3.14 A receipt from a licensed healthcare provider with name and current address; or
 - 3.3.15 First class mail with name and current address.
- 3.4 “Applicant” means an eligible party seeking to obtain the vital records of a registrant.
- 3.5 “Custodian” means any person or entity who maintains official copies of vital records for access and inspection by the public, or any lawful purpose, including the Department of Health, Vermont State Archives and Records Administration and town clerks.
- 3.6 “Department” means the Vermont Department of Health.
- 3.7 “Eligible party” means the same as defined in 18 V.S.A. § 5016(b)(2):
- 3.7.1 The registrant; or their spouse, child, grandchild, parent, sibling, grandparent, or guardian; a person petitioning to open a decedent's estate; a court- appointed executor or administrator; or the legal representative of any of these;

- 3.7.2 A specific person pursuant to a court order finding that a noncertified copy is not sufficient for the applicant's legal purpose and that a certified copy of the birth or death certificate is needed for the determination or protection of a person's right;
- 3.7.3 An employee of a public agency authorized by the State Registrar as defined in 1 V.S.A § 317; or
- 3.7.4 In the case of a death certificate only, additionally to:
- 3.7.4.1 the individual with authority for final disposition as provided 18 V.S.A. § 5227, or a funeral home or crematorium acting on the individual's behalf;
 - 3.7.4.2 the Social Security Administration;
 - 3.7.4.3 the U.S. Department of Veterans Affairs; or
 - 3.7.4.4 the deceased's insurance carrier, if such carrier provides benefits to the decedent's survivors or beneficiaries.
- 3.8 "Gender marker" reflected on a birth certificate as "Sex" means:
- 3.8.1 "F" to represent female;
 - 3.8.2 "M" to represent male; and
 - 3.8.3 "X" to represent non-binary.
- 3.9 "Generational identifier" means JR, SR, or numerals to designate the number of generations. Generational identifiers may not take the form of commonly conferred academic honorifics such as, but not limited to: MD, JD, DO, Esq., BA, BS, MA, MS, or PhD, or other designations not commonly used as generational identifiers.
- 3.10 "Homeless services provider" means:
- 3.10.1 A governmental or nonprofit agency receiving federal, state, or municipal funding to provide services to a person experiencing homelessness or that is otherwise sanctioned to provide those services by a local homeless continuum of care organization.

- 3.10.2 An attorney licensed to practice law in Vermont and who is representing a client for whom the request for a certified birth certificate is being made.
- 3.10.3 A local educational agency liaison for homeless children and youth, or a school social worker.
- 3.10.4 A human services provider or public social services provider funded by the State of Vermont to provide homeless children or youth services, health services, mental or behavioral health services, substance use disorder services, public assistance, or employment services.
- 3.11 "Issuing agent" means a town clerk or duly authorized representative of the State Registrar who issues certified and noncertified copies of vital records.
- 3.12 "Non-binary" means a person whose gender identity is not exclusively male or female, including, but not limited to, a person whose gender identity is intersex, agender, amalggender, androgynous, bigender, demigender, genderfluid, genderqueer, gender non-conforming, neutrois, nonbinary, pangender, third sex, transgender, Two-Spirit, or otherwise unspecified by the person.
- 3.13 "Person experiencing homelessness" and "Homeless," mean the same as the definition found in 42 USC § 11302 for a "homeless individual".
- 3.14 "Registrant" means the individual who is the subject of a vital record event certificate.
- 3.15 "Secure facility" means a building or room equipped with locks or other security devices that does not permit access during non-working or non-business hours.
- 3.16 "Valid government-issued identification" means a document that shall contain an expiration date that has not passed, a photograph, a current address, a signature and a unique number or barcode such as a driver's license, or valid passport, assigned to the person. The following forms of government-issued identification are acceptable:
- 3.16.1 United States issued Driver's License or Identification card;
- 3.16.2 United States Territories Driver's License or Identification card;
- 3.16.3 Tribal Identification Card that contains the bearer's signature;



- 3.16.4 U.S. Military Identification Card that contains the bearer's signature;
- 3.16.5 Passport issued by the United States, or by a foreign country recognized by the United States government;
- 3.16.6 Visa issued by the United States and that is included with in a passport and the bearer's signature is on the passport and not on the Visa;
- 3.16.7 U.S. Resident Alien Card, also known as the U.S. Green Card or the U.S. Permanent Resident Card (Form I-551); or U.S. Employment Authorization Document / Card (Form I-765 or successor form).

4.0 Documents Needed to Obtain a Birth or Death Certificate

- 4.1 An applicant is required to provide a valid government-issued identification document or alternate means of identification and must present the identification at time of signing the Vermont application for a certified copy of a birth or death certificate.
- 4.2 An applicant may establish their identity by providing a minimum of two alternate means of identification (exempting 3.3.12 and 3.3.13 when only one form of identification is needed). The Office of Vital Records may request additional evidence as necessary for the positive identification of the applicant.
- 4.3 A person experiencing homelessness may establish their identity necessary to be eligible to receive a certified birth certificate by providing a completed Affidavit of Homeless Status, available on the Department's website. The Affidavit must be signed by both the applicant and the homeless services provider. The Office of Vital Records may request additional documentation as necessary for the positive identification of the applicant.

5.0 Applications for Certified Copies of Birth and Death Certificates

- 5.1 The Vermont application for a certified copy of birth or death certificate must be submitted by an eligible party to:
 - 5.1.1 the Vermont Office of Vital Records;
 - 5.1.2 the Vermont State Archives and Records Administration;
 - 5.1.3 a statutorily authorized issuing agent, such as town clerk's office;
 - 5.1.4 a contractor of the State of Vermont that is providing application; or processing services on behalf of the Vermont Office of Vital Records.



6.0 Certification of Birth and Death Certificates by Town Clerks and Their Designees

6.1 Town clerks and their designees shall certify a birth or death certificate copy using one of the following methods:

6.1.1 Use of a town seal that does not include the town clerk's name, and ensures all documents are signed by either the town clerk, assistant town clerk, or another designated assistant clerk pursuant to state statute; or

6.1.2 Use of a town seal that includes the town clerk's name, and ensures all documents using that seal are signed by the town clerk whose name is on the seal.

7.0 Issuance of Certified Copies of Births and Deaths During a Declared State of Emergency or Other Disruption

7.1 The State Registrar may temporarily suspend the requirement for issuing agents to utilize the statewide registration system for the issuance of certified copies of birth and death certificates. The reasons for a temporary suspension are limited to:

7.1.1 A declared state of emergency that covers the State of Vermont when the period has exceeded 48 hours;

7.1.2 A technical event with the statewide registration system that results in the system being inaccessible to issuing agents for a period that exceeds 48 hours.

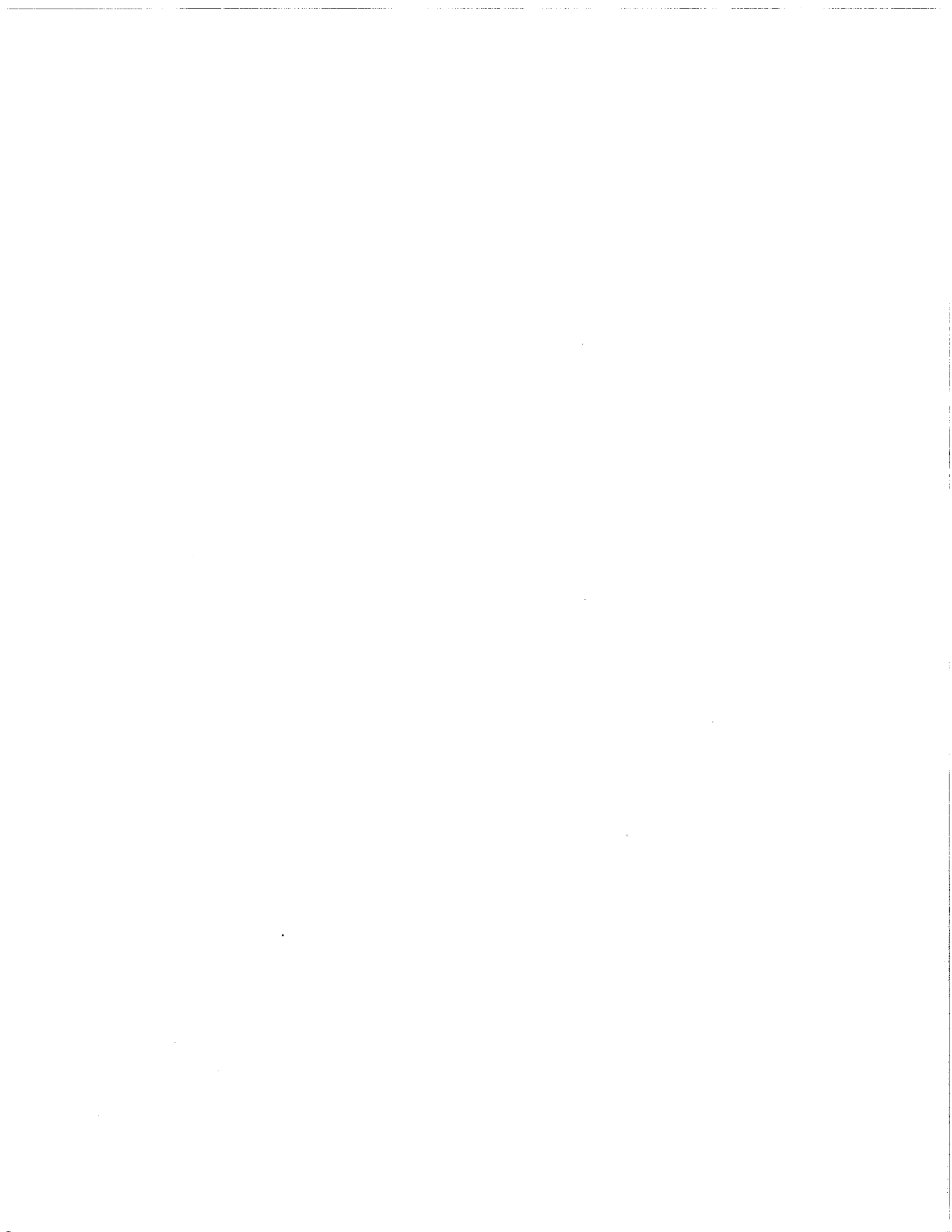
7.2 During a period in which a temporary suspension has been issued, the State Registrar shall provide instruction to the issuing agents for the methods to be used to issue and track all certified copies, and for later recording in the statewide registration system when service has been restored.

8.0 Physical Security Requirements for Creation and Storage of Birth and Death Certificates

8.1 Activities to support the creation, storage, and issuance of certified copies of Vermont birth and death certificates shall occur in secure, government-operated buildings. The area of the building that houses the Vermont birth and death certificates, and materials utilized to create, modify, or access the certificates, and the computers used to access the statewide registration system, shall meet the following requirements:



- 8.1.1 Contains appropriate sensor, warning systems, or controls in place to monitor for fire, smoke, or other emergencies;
- 8.1.2 Contains a fire suppression method, which may be dry- or wet-suppression, and/or fire extinguishers;
- 8.1.3 Is a secure facility;
- 8.1.4 Employee workspace is separated from the public, such as by service counter, service window, locked door, or other physical barrier;
- 8.1.5 Non-employees, such as, but not limited to, visitors, vendors, delivery personnel, and cleaning staff, must identify themselves to the town clerk or their designee, and request access to the space that contains the birth and death certificate materials, the certificates themselves, and/or the computers used to access the statewide registration system, providing a valid and reasonable reason for such access. These non-employees shall be escorted to the designated area. If cleaning is done during nonworking hours, only preapproved cleaning personnel shall be permitted access to the space that contains the birth and death certificate materials, the certificates themselves, and/or the computers used to access the statewide registration system;
- 8.1.6 All materials used for certification of the birth and death certificates, such as, but not limited to, equipment (computers, printers, town seal), security paper, and any other documents or confidential files/records, shall be locked in a secure area or cabinets accessible only to the town clerk and their designees;
- 8.1.7 Visitors shall be accompanied when such visitors may have access to the materials used for certification of birth and death certificates, or access to the statewide registration system.
- 8.2 If an existing government-operated building does not have a fireproof safe or vault as specified in 18 V.S.A. § 5001(b), the town clerk shall ensure that these rules are complied with and confirm in writing to the State Registrar that all reasonable precautions and safeguards have been implemented to protect the birth and death certificate materials, the birth and death certificates, and the computer used to access the statewide registration system.



8.3 The public shall be allowed access to view or inspect birth and death certificates stored at issuing agent's offices during the standard business hours of the office. Issuing agents may implement reasonable precautions to protect the certificates from potential harm or theft, such as, but not limited to:

8.3.1 Monitoring visitors;

8.3.2 Requiring visitors to view/inspect certificates at a designated table or office;

8.3.3 Retrieving only the birth and death certificates requested by the visitor rather than providing unlimited access to all certificates;

8.3.4 Requiring visitors to sign in and out when requesting access to birth and death certificates; and/or

8.3.5 Requiring visitors to show the contents of any bags, briefcases, or other storage methods prior to departing the office.

9.0 Criteria for Acceptance of Child's Name on Birth Certificates

9.1 In order to be valid, names on birth certificates shall:

9.1.1 Not contain pictographs or ideographs or writing that is not part of the standard twenty-six letter English alphabet;

9.1.2 Not contain symbols other than:

9.1.2.1 Numerals used for generational identifiers;

9.1.2.2 Common punctuation such as hyphens for hyphenated names, apostrophes used as part of a given name or surname, and periods in generational identifiers or when an initial or abbreviation is used as part of a name; or

9.1.2.3 Special characters that are commonly used, such as accent marks and tildes.

9.1.3 Not exceed a total of 50 characters in length for each of First, Middle, and Last Name. The count of maximum allowable characters shall include hyphens, apostrophes, and periods when used as part of the name.

9.1.4 Contain a last name.

9.1.5 Contain no more than one generational identifier after the last name.

10.0 Amending a Gender Marker on a Birth Certificate

10.1 A registrant born in Vermont may amend the gender marker on their birth certificate.

10.1.1 Any person 16 years or older may amend their gender marker.

10.1.2 Any person under the age of 16 may amend their gender marker with signed consent from a parent or legal guardian.

10.2 A registrant may amend their gender marker to reflect their identity through self-attestation by filing the Affidavit of Gender Identity available on the Department's website.

10.3 To file for an amendment under Section 10.0, registrants shall submit a notarized Affidavit of Gender Identity, signed by the registrant, or if applicable, the registrant's parent or legal guardian, by mail or in-person to the Vermont Department of Health, Vital Records Office.

10.4 A new certificate issued pursuant to this section shall be substituted for the original birth certificate in official records. The new certificate shall not show that a change in name or sex, or both, has been made.

No. 88. An act relating to amending a birth certificate to reflect gender identity.

(H.628)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. LEGISLATIVE INTENT AND PURPOSE

It is the intent of the General Assembly to promote equity by allowing all individuals, regardless of gender, to amend their vital records to accurately reflect and affirm their identities. There is a long history of discrimination and violence against the LGBTQIA+ community. This act serves to mitigate future harm through the creation of a simple and equitable system to provide for all gender marker changes on a Vermont birth certificate to be made through means such as self-attestation.

Sec. 2. 18 V.S.A. § 5112 is amended to read:

§ 5112. ISSUANCE OF NEW BIRTH CERTIFICATE; ~~CHANGE OF SEX~~

~~(a)(1) Upon receipt of an application for a new birth certificate and after receiving sufficient evidence to determine that an individual's sexual reassignment has been completed, the State Registrar shall update the Statewide Registration System and issue a new birth certificate to:~~

~~(A) show that the sex of the individual born in this State has been changed; and~~

~~(B) if the application is accompanied by a decree of the Probate Division authorizing a change of name associated with the change of sex, to reflect the change of name.~~



~~(2) The State Registrar shall record in the System the identity of the person requesting the new certificate, the nature and content of the change made, the person who made the change, and the date of the change.~~

~~(b)(1) An affidavit by a licensed physician who has treated or evaluated the individual stating that the individual has undergone surgical, hormonal, or other treatment appropriate for that individual for the purpose of gender transition shall constitute sufficient evidence to determine that sexual reassignment has been completed. The affidavit shall include the medical license number and signature of the physician.~~

~~(2) If the State Registrar denies an application under this section, the applicant may petition the Probate Division of the Superior Court, which shall review the application and relevant evidence de novo to determine if the issuance of a new birth certificate under this section is warranted. If the court issues a decree ordering the issuance of a new birth certificate under this section, the State Registrar shall update the Statewide Registration System and issue a new birth certificate in accordance with subsection (a) of this section.~~

~~(c) A new certificate issued pursuant to subsection (a) of this section shall be substituted for the original birth certificate in official records. The new certificate shall not show that a change in name or sex, or both, has been made. The original birth certificate, the Probate Division change of name decree, if any, and any other records relating to the issuance of the new birth certificate shall be confidential and shall be exempt from public inspection and copying~~



~~under the Public Records Act; however an individual may have access to his or her own records and may authorize the State Registrar to confirm that he or she issued a new birth certificate to the individual that reflects a change in name or sex, or both.~~

~~(d) If an individual born in this State has an amended birth certificate showing that the sex of the individual has been changed, and the birth certificate is marked "Court Amended" or otherwise clearly shows that it has been amended, the individual may receive a new birth certificate from the State Registrar upon application.~~

(a) It is the policy of the State of Vermont to honor and acknowledge all gender identities and protect public health and dignity of all individuals in Vermont, irrespective of their gender. Accordingly, the State shall adopt a simple process by which an individual may amend the marker on a birth certificate to reflect the individual's gender identity, including a third non-binary marker.

(b) Pursuant to 3 V.S.A. chapter 25, the Department shall adopt rules as necessary for the purposes of implementing, administering, or enforcing the requirements of this section.

(c) The Department may adopt rules to add gender pronouns to the list of markers on a birth certificate in order to foster a gender literate environment and reflect an individual's gender identity.

(d) Except as otherwise required by law, records relating to the amendment of a birth certificate pursuant to this chapter shall be confidential and shall be exempt from public inspection and copying under the Public Records Act.

Sec. 3. EMERGENCY RULEMAKING AUTHORITY

Notwithstanding any provision of 3 V.S.A. § 844 to the contrary, the Department of Health shall have the authority to adopt emergency rules for the purposes of implementing, administering, or enforcing the purposes of this act.

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2022.

Date Governor signed bill: April 6, 2022



VERMONT **GENERAL ASSEMBLY**

The Vermont Statutes Online

Title 18 : Health

Chapter 104 : Birth Records

(Cite as: 18 V.S.A. § 5112)

§ 5112. Issuance of new birth certificate; change of sex

(a)(1) Upon receipt of an application for a new birth certificate and after receiving sufficient evidence to determine that an individual's sexual reassignment has been completed, the State Registrar shall update the Statewide Registration System and issue a new birth certificate to:

(A) show that the sex of the individual born in this State has been changed; and

(B) if the application is accompanied by a decree of the Probate Division authorizing a change of name associated with the change of sex, to reflect the change of name.

(2) The State Registrar shall record in the System the identity of the person requesting the new certificate, the nature and content of the change made, the person who made the change, and the date of the change.

(b)(1) An affidavit by a licensed physician who has treated or evaluated the individual stating that the individual has undergone surgical, hormonal, or other treatment appropriate for that individual for the purpose of gender transition shall constitute sufficient evidence to determine that sexual reassignment has been completed. The affidavit shall include the medical license number and signature of the physician.

(2) If the State Registrar denies an application under this section, the applicant may petition the Probate Division of the Superior Court, which shall review the application and relevant evidence de novo to determine if the issuance of a new birth certificate under this section is warranted. If the court issues a decree ordering the issuance of a new birth certificate under this section, the State Registrar shall update the Statewide Registration System and issue a new birth certificate in accordance with subsection (a) of this section.

(c) A new certificate issued pursuant to subsection (a) of this section shall be substituted for the original birth certificate in official records. The new certificate shall not show that a change in name or sex, or both, has been made. The original birth certificate, the Probate Division change of name decree, if any, and any other records relating to the issuance of the new birth certificate shall be confidential and shall be exempt from public inspection and copying under the Public Records Act; however an

individual may have access to his or her own records and may authorize the State Registrar to confirm that he or she issued a new birth certificate to the individual that reflects a change in name or sex, or both.

(d) If an individual born in this State has an amended birth certificate showing that the sex of the individual has been changed, and the birth certificate is marked "Court Amended" or otherwise clearly shows that it has been amended, the individual may receive a new birth certificate from the State Registrar upon application. (Added 2011, No. 35, § 4, eff. May 18, 2011; amended 2015, No. 23, § 10; 2017, No. 46, § 38, eff. July 1, 2019.)

VERMONT **GENERAL ASSEMBLY**

The Vermont Statutes Online

Title 3 : Executive

Chapter 025 : Administrative Procedure

Subchapter 001 : General Provisions

(Cite as: 3 V.S.A. § 801)

§ 801. Short title and definitions

(a) This chapter may be cited as the "Vermont Administrative Procedure Act."

(b) As used in this chapter:

(1) "Agency" means a State board, commission, department, agency, or other entity or officer of State government, other than the Legislature, the courts, the Commander in Chief, and the Military Department, authorized by law to make rules or to determine contested cases.

(2) "Contested case" means a proceeding, including but not restricted to rate-making and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing.

(3) "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law.

(4) "Licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

(5) "Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.

(6) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

(7) "Practice" means a substantive or procedural requirement of an agency, affecting one or more persons who are not employees of the agency, that is used by the agency in the discharge of its powers and duties. The term includes all such requirements, regardless of whether they are stated in writing.

(8) "Procedure" means a practice that has been adopted in writing, either at the election of the agency or as the result of a request under subsection 831(b) of this title. The term includes any practice of any agency that has been adopted in writing, whether or not labeled as a procedure, except for each of the following:

(A) a rule adopted under sections 836-844 of this title;

(B) a written document issued in a contested case that imposes substantive or procedural requirements on the parties to the case;

(C) a statement that concerns only:

(i) the internal management of an agency and does not affect private rights or procedures available to the public;

(ii) the internal management of facilities that are secured for the safety of the public and the individuals residing within them; or

(iii) guidance regarding the safety or security of the staff of an agency or its designated service providers or of individuals being provided services by the agency or such a provider;

(D) an intergovernmental or interagency memorandum, directive, or communication that does not affect private rights or procedures available to the public;

(E) an opinion of the Attorney General; or

(F) a statement that establishes criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections, in settling commercial disputes or negotiating commercial arrangements, or in the defense, prosecution, or settlement of cases, if disclosure of the criteria or guidelines would compromise an investigation or the health and safety of an employee or member of the public, enable law violators to avoid detection, facilitate disregard of requirements imposed by law, or give a clearly improper advantage to persons that are in an adverse position to the State.

(9) "Rule" means each agency statement of general applicability that implements, interprets, or prescribes law or policy and that has been adopted in the manner provided by sections 836-844 of this title.

(10) "Incorporation by reference" means the use of language in the text of a regulation that expressly refers to a document other than the regulation itself.

(11) "Adopting authority" means, for agencies that are attached to the Agencies of Administration, of Commerce and Community Development, of Natural Resources, of Human Services, and of Transportation, or any of their components, the secretaries of those agencies; for agencies attached to other departments or any of their components, the commissioners of those departments; and for other agencies, the chief officer of the agency. However, for the procedural rules of boards with quasi-judicial powers, for the Transportation Board, for the Vermont Veterans' Memorial Cemetery Advisory Board, and for the Fish and Wildlife Board, the chair or executive secretary of the board shall be the adopting authority. The Secretary of State shall be the adopting authority for the Office of Professional Regulation.

(12) "Small business" means a business employing no more than 20 full-time

employees.

(13)(A) "Arbitrary," when applied to an agency rule or action, means that one or more of the following apply:

(i) There is no factual basis for the decision made by the agency.

(ii) The decision made by the agency is not rationally connected to the factual basis asserted for the decision.

(iii) The decision made by the agency would not make sense to a reasonable person.

(B) The General Assembly intends that this definition be applied in accordance with the Vermont Supreme Court's application of "arbitrary" in *Beyers v. Water Resources Board*, 2006 VT 65, and *In re Town of Sherburne*, 154 Vt. 596 (1990).

(14) "Guidance document" means a written record that has not been adopted in accordance with sections 836-844 of this title and that is issued by an agency to assist the public by providing an agency's current approach to or interpretation of law or describing how and when an agency will exercise discretionary functions. The term does not include the documents described in subdivisions (8)(A) through (F) of this section.

(15) "Index" means a searchable list of entries that contains subjects and titles with page numbers, hyperlinks, or other connections that link each entry to the text or document to which it refers. (Added 1967, No. 360 (Adj. Sess.), § 1, eff. July 1, 1969; amended 1981, No. 82, § 1; 1983, No. 158 (Adj. Sess.), eff. April 13, 1984; 1985, No. 56, § 1; 1985, No. 269 (Adj. Sess.), § 4; 1987, No. 76, § 18; 1989, No. 69, § 2, eff. May 27, 1989; 1989, No. 250 (Adj. Sess.), § 88; 2001, No. 149 (Adj. Sess.), § 46, eff. June 27, 2002; 2017, No. 113 (Adj. Sess.), § 3; 2017, No. 156 (Adj. Sess.), § 2.)





Proposed Rules Postings

A Service of the Office of the Secretary of State

- [Vermont.gov](#)
- [Feedback](#)
- [SOS Website](#)
- [APA Site](#)
- [Code of Vermont Rules](#)
- [Recent](#)
- [Search Rules](#)
- [Calendar](#)
- [Subscribe](#)
- [APA Contact Info](#)

Search Rules

Deadline For Public Comment

Deadline: Jul 29, 2022

The deadline for public comment has expired. Contact the agency or primary contact person listed below for assistance.

Rule Details

Rule Number: 22P011

Title: Vital Records Rule

Type: Standard

Status: Proposed

Agency: Department of Health, Agency of Human Services

Legal Authority: Act 88 (2022) Sec. 2(b), 18 V.S.A. § 5112 (b), and 3 V.S.A § 801(b) (11).

Summary: This rulemaking implements a process for individuals to amend the marker on their birth certificate to reflect the individual's gender identity. Specifically, it does the following: 1) Defines the term "non-binary" to describe the additional gender identities that may be reflected on a birth certificate. 2) Creates a process for registrants to file their Affidavit of Gender Identity with the Department.

Persons Affected: Persons born in Vermont who wish to amend their birth certificate; the Vermont Department of Health Vital Records Office.

Economic Impact:

The result of this rule be a simplified process that will result in a small economic benefit to the Vital Records Office and an unknown economics benefit to persons wishing to amend the gender markers on their birth certificates.

Posting date:

Jun 22,2022

Hearing Information

Information for Hearing # 1

Hearing date:

07-22-2022 1:00 PM [ADD TO YOUR CALENDAR](#)

Location:

Vermont Department of Health

Address:

108 Cherry Street, Conference Room 2A

City:

Burlington

State:

VT

Zip:

05401

Hearing Notes:

Contact Information

Information for Primary Contact

PRIMARY CONTACT PERSON - A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE.

Level: Primary

Name: David Englander

Agency: Department of Health, Agency of Human Services

Address: 108 Cherry Street

City: Burlington

State: VT

Zip: 05401

Telephone: 802-863-7280

Fax: 802-941-1275

Email: ahs.vdhrules@vermont.gov[SEND A COMMENT](#)Website <https://www.healthvermont.gov/about-us/laws-regulations/public-comment>Address: [VIEW WEBSITE](#)

Information for Secondary Contact

SECONDARY CONTACT PERSON - A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON.

Level: Secondary

Name: Natalie Weill

Agency: Department of Health, Agency of Human Services

Address: 108 Cherry Street, Conference Room 2A

City: Burlington

State: VT



Zip: 05401
Telephone: 802-863-7280
Fax: 802-941-1275
Email: ahs.vdhrules@vermont.gov
[SEND A COMMENT](#)

Website Address: <https://www.healthvermont.gov/about-us/laws-regulations/public-comment>
[VIEW WEBSITE](#)

Keyword Information

Keywords:

Vital Records
Birth Certificate
Gender Identity
Registrants
Sex

[Back](#)

[Accessibility Policy](#) | [Privacy Policy](#)

A Vermont Government Website Copyright 2022 State of Vermont



v 1.0.2



OFFICE OF THE SECRETARY OF STATE
VERMONT STATE ARCHIVES & RECORDS ADMINISTRATION (VSARA)
(802) 828-2863

TO:	Seven Days Katie Hodges (khodges@sevendaysvt.com) Legals	Tel: (802) 865-1020 x110.
	The Caledonian Record Julie Poutré (adv@caledonian-record.com)	Tel: 748-8121 FAX: 748-1613
	Times Argus / Rutland Herald Melody Hudson (classified.ads@rutlandherald.com) Elizabeth Marrier (elizabeth.marrier@rutlandherald.com)	Tel: 802-747-6121 ext 2238 FAX: 802-776-5600
	The Valley News (advertising@vnews.com)	Tel: 603-298-8711 FAX: 603-298-0212
	The Addison Independent (legals@addisonindependent.com)	Tel: 388-4944 FAX: 388-3100 Attn: Display Advertising
	The Bennington Banner / Brattleboro Reformer Lylah Wright (lwright@reformer.com)	Tel: 254-2311 ext. 132 FAX: 447-2028 Attn: Lylah Wright
	The Chronicle (ads@bartonchronicle.com)	Tel: 525-3531 FAX: 525-3200
	Herald of Randolph (ads@ourherald.com)	Tel: 728-3232 FAX: 728-9275 Attn: Brandi Comette
	Newport Daily Express (jlafoe@newportvermontdailyexpress.com)	Tel: 334-6568 FAX: 334-6891 Attn: Jon Lafoe
	News & Citizen (mike@stowereporter.com) Irene Nuzzo (irene@newsandcitizen.com and ads@stowereporter.com removed from distribution list per Lisa Stearns.	Tel: 888-2212 FAX: 888-2173 Attn: Bryan
	St. Albans Messenger Ben Letourneau (ben.letourneau@samessenger.com)	Tel: 524-9771 ext. 117 FAX: 527-1948 Attn: Ben Letourneau
	The Islander (islander@vermontislander.com)	Tel: 802-372-5600 FAX: 802-372-3025
	Vermont Lawyer (hunter.press.vermont@gmail.com)	Attn: Will Hunter

FROM: APA Coordinator, VSARA

Date of Fax: June 27, 2022

RE: The "Proposed State Rules " ad copy to run on

June 30, 2022

PAGES INCLUDING THIS COVER MEMO:

2

***NOTE* 8-pt font in body. 12-pt font max. for headings - single space body. Please include dashed lines where they appear in ad copy. Otherwise minimize the use of white space. Exceptions require written approval.**

If you have questions, or if the printing schedule of your paper is disrupted by holiday etc. please contact VSARA at 802-828-3700, or E-Mail sos.statutoryfilings@vermont.gov, Thanks.

PROPOSED STATE RULES

By law, public notice of proposed rules must be given by publication in newspapers of record. The purpose of these notices is to give the public a chance to respond to the proposals. The public notices for administrative rules are now also available online at <https://secure.vermont.gov/SOS/rules/>. The law requires an agency to hold a public hearing on a proposed rule, if requested to do so in writing by 25 persons or an association having at least 25 members.

To make special arrangements for individuals with disabilities or special needs please call or write the contact person listed below as soon as possible.

To obtain further information concerning any scheduled hearing(s), obtain copies of proposed rule(s) or submit comments regarding proposed rule(s), please call or write the contact person listed below. You may also submit comments in writing to the Legislative Committee on Administrative Rules, State House, Montpelier, Vermont 05602 (802-828-2231).

Vital Records Rule

Vermont Proposed Rule: 22P011

AGENCY: Agency of Human Services, Department of Health

CONCISE SUMMARY: This rulemaking implements a process for individuals to amend the marker on their birth certificate to reflect the individual's gender identity. Specifically, it does the following: 1) Defines the term "non-binary" to describe the additional gender identities that may be reflected on a birth certificate. 2) Creates a process for registrants to file their Affidavit of Gender Identity with the Department.

FOR FURTHER INFORMATION, CONTACT: David Englander, Department of Health, 108 Cherry Street, Burlington, VT 05401, Tel: 802-863-7280, Fax: 802-951-1275, Email: ahs.vdhrules@vermont.gov URL:

<https://www.healthvermont.gov/about-us/laws-regulations/public-comment>.

FOR COPIES: Natalie Weill, Department of Health, 108 Cherry Street, Burlington, VT 05401, Tel: 802-863-7280, Fax: 802-951-1275, Email: ahs.vdhrules@vermont.gov.

Term and Universal Life Insurance Reserve Financing (Reg. 22-017-I).

Vermont Proposed Rule: 22P012

AGENCY: Department of Financial Regulation

CONCISE SUMMARY: The Department is proposing a new rule that establishes uniform standards governing reserve financing arrangements pertaining to insurers issuing term and universal life insurance products with secondary guarantees. The new rule formalizes existing Department practices and is based on the National Association of Insurance Commissioners (NAIC) Model Rule 787.

FOR FURTHER INFORMATION, CONTACT: Dan Raddock, Assistant General Counsel, Department of Financial Regulation, 89 Main Street, Third Floor, Montpelier, VT 05620 Tel: 802-371-8980 Email:

Dan.Raddock@Vermont.gov URL: <https://dfr.vermont.gov/about-us/legal-general-counsel/proposed-rules-and-public-comment>

FOR COPIES: Hillary Borcharding, Assistant General Counsel, Department of Financial Regulation, 89 Main Street, Third Floor, Montpelier, VT 05620 Tel: 802-249-6512 Email: Hillary.Borcharding@Vermont.gov.
