

NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing on the proposed repeal and replacement of rule, 7.2.2 NMAC, “Vital Records and Statistics”. The public hearing will be held on September 20, 2022 at 9 a.m. via Cisco WebEx online, via telephone, and comments will be received via email through the conclusion of the hearing.

The hearing is being held via internet, email, and telephonic means due to the concerns surrounding Coronavirus and in consideration of Governor Michelle Lujan Grisham’s Executive Order 2020-004, Declaration of a Public Health Emergency, and any subsequent executive orders. Members of the public who wish to submit public comment regarding the proposed rule changes will be able to do so via video conference and via telephone during the course of the hearing, and by submitting written comment before the conclusion of the hearing.

The hearing will be conducted to receive public comments regarding the proposed repeal and replacement of the current rule, 7.2.2 NMAC, concerning vital records and health statistics. The proposed replacement rule is intended to provide greater clarity in existing regulatory and statutory requirements, to address recent statutory revisions to the Vital Statistics Act, Sections 24-14-1 to 24-14-31 NMSA 1978, and to add the reporting requirements as found in Section 24-1-43, NMSA 1978, Reporting; medical aid in dying.

The legal authority authorizing the proposed repeal and replacement of the rule by the Department is at Subsection E of Section 9-7-6 NMSA 1978, Sections 24-14-1 to 24-14-31 NMSA, 1978, as amended, and Section 24-1-43 NMSA 1978.

Purpose of changes are listed below:

7.2.2.3 - Statutory Authority:

- To revise the section to reflect the statutory authority for the regulations.

7.2.2.7 - Definitions:

- The purpose of the changes is to:
 - add the definition of “Healthcare provider” to define who is required to report prescribed medical aid in dying prescriptions pursuant to the End-of-Life Options Act;
 - add the definition of “medical aid in dying” to provide a description of the act of medical aid in dying as found in the Medical Aid in Dying Act;
 - add a definition of “homeless” for the purposes of waiving fees for vital records for homeless individuals pursuant to Subsection XX of Section XX-X-XX; and
 - Renumber definitions section to incorporate the new definitions.

7.2.2.13 - Registration of death:

- The purpose of the changes in this section are to:
 - Change the title to be consistent with the style of the current regulations;
 - Require electronic registration of death by all parties involved in the death registration process.
 - Electronic registration of deaths allows deaths to be recorded more quickly and in a standardized fashion consistent with the state’s electronic vital records systems.
 - Clarifying deadlines for the registration of death
 - Timely reporting of deaths is important to assist families and executors in the timely administration of all duties and legal processes required after a death including processing the estate, the probate process, and funeral services. Timely reporting of deaths also provides accurate data for health equity purposes.
 - Providing a process for what happens to a birth record after the death of a registrant and providing for a mechanism to obtain an original certificate of birth for an infant who was born alive and dies within two months of birth.
 - This change is to put into rule the process of what happens to a birth record after the registrant is deceased. For purposes of fraud prevention, It is important that birth records for deceased individuals not be released without the corresponding watermark. Also understanding that a new parent may not have a chance to get an original birth

certificate for their child if a death occurs soon after birth, the department is creating a limited mechanism to access an unmarked record for a short amount of time.

7.2.2.16 - Authorization for final disposition:

- The purpose of the change in section D is to add a requirement of providing vital records a certified copy of a death certificate for a death that did not occur in New Mexico for a Disinterment or reinterment permit.
- This requirement is important because vital records must confirm the death of an individual to issue a disinterment or reinterment permit. As the New Mexico Vital Records does not have access to other state's records, they must have the requesting party provide that death certificate.

7.2.2.17 - Amendment of Live Birth and Death Certificates

- The purpose of the changes in this section are to add sections (3) and (4) to 7.2.2.17(D) which state that a name may not be removed from a vital record without a court order and that no amendment may be made to a birth record after the registrant is deceased without a court order. The section is additionally renumbered as necessary.
- Vital Records may only make certain changes without a court order. For the purposes of fraud prevention, any change that occurs after a death or significantly alters a name on a record including dropping a name must be sanctioned by the court.

7.2.2.23 - Fees for Copies, Searches and Other Services

- The purposes of the changes in this section are as follows:
- Section C adds a process to remove fees for vital records for individuals who are homeless at the time of the records request.
- This part is added for compliance with 24-14-29 NMSA 1978
- Section G adds notification of administrative closures of cases after six months of inactivity.
- Cases cannot be kept open indefinitely by vital records. After more than six months of inactivity, a new search would need to be conducted and the law requires that a fee be charged for that search -24-14-29 NMSA 1978

7.2.2.24 - Court Orders:

- This amendment adds section C clarifying that changes in a court order are only applicable to those registrants named in the court order and may not change any other record unless specified in the court order.
- This is to provide extra clarity on an issue that has caused confusion for the public regarding which documents can be changed when a court order is issued that only affects a single individual. For example a court order changing the name of one individual would only permit a change on that individual's record. If that individual is also listed on a separate record that belongs to another individual, a child for example, that child's record may only be changed if the court order specifically directs a change to that record as well.

7.2.2.25 - Naming

- This is a new section added to provide clear requirements for any record in which a name is given to a registrant. The name given must comply with the requirements listed.
- The requirements are derived from New Mexico statutes and New Mexico and Federal case law.

7.2.2.26 - Reporting; Medical Aid in Dying

- This is a new section added to provide a process for reporting prescriptions of medical aid in dying pursuant to the requirements of Section 24-1-43, NMSA 1978.

Any interested member of the public may attend the hearing and submit data, views, or arguments either orally or in writing on the proposed rule amendments during the hearing. To access the hearing by telephone: please call 1-844-992-4726. Your telephone comments will be recorded. To access the hearing via internet: please go to Webex.com; click the "Join" button; click the "Join a meeting" button; enter the following meeting number and password where indicated on screen—Meeting number (access code): 2495 982 5553 #, Meeting password: Kfpzw3mmY42 click the "OK" button. You may also provide comment via Chat during the live streaming.

Written public comment regarding the proposed rule amendments can be submitted by either mailing the comment to the following address:

Sheila Apodaca

Paralegal/Legal Assistant
Office of General Counsel
New Mexico Department of Health
1190 S. St. Francis Drive, Suite N-4095
Santa Fe, NM 87505
(505) 827-2723

Or preferably by e-mailing the comment to the e-mail address: Sheila.Apodaca@state.nm.us.

Written comments must be received by the close of the public rule hearing on September 15, 2022. All written comments will be published on the agency website at <http://nmhealth.org/about/asd/cmo/rules/> within three (3) days of receipt, and will be available at the New Mexico Department of Health Public Health Division for public inspection.

If you are an individual with a disability who is in need of special assistance or accommodations to attend or participate in the hearing, please contact Sheila Apodaca by telephone at (505) 827-2997. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

The foregoing are summaries of the proposed rule. The proposed rule includes various additional substantive revisions not identified here. Free copies of the full text of the proposed rule may be obtained online from the Department's website at <https://nmhealth.org/publication/regulation/>.