

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Health

Regulation/Package Title: Chapter 3701-5 – Vital Statistics

Rule Number(s): 3701-5-01 to 3701-5-16

Date: October 2015 – REVISED 12/09/2015

Rule Type:

☐ New

☒ Amended

☒ 5-Year Review

☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulations in plain language.

As required by Ohio Revised Code Section 3705.02, the rules set forth in Chapter 3701-5 of the Ohio Administrative Code establish the forms and protocol for collecting and correcting data throughout the Vital Statistics system. The rules set forth in Chapter 3701-5 include, but are not limited to, fees for certified copies, filing of in institution and out of institution birth, filing of a death certificate, and completing and certifying cause of death.

Pursuant to the five year review the following rules are being recommended without changes:

3701-5-13– The rule sets the heirloom certificate fee and specifies the amount that must be paid to specific funds.

3701-5-14– The rule establishes the protocol that every coroner shall follow when performing an autopsy of a child under two years of age.

3701-5-15– The rule sets the fees for the copy of the contents of an adoption file.

Revisions have been made to:

3701-5-01 – The rule sets forth the definitions used throughout the Chapter. Updates to the definitions of “sub-registrar” and “vital records” were made. The rule is being revised to include the definition of “delayed birth”.

3701-5-02 – The rule sets forth the forms that shall be used in the system of vital statistics. The rule is being revised to correct and remove obsolete forms and to remove the requirement that birth forms shall be handwritten in black ink. In particular, Appendix A and Appendix Z shows that a Certificate of Live Birth and the Certification of Birth can designate an individual as a ‘Mother’, ‘Father’ or ‘Parent’ on these documents. For Marriage and Divorce Abstracts, Appendix J and K, individuals will be known as applicants, rather than bride and groom or husband and wife. Finally, the Certificate of Death has been amended to include parents of the decedent, instead of mother and father.

3701-5-03 – The rule sets forth the fees for a certified copy of a birth or death record. The rule is being revised to correct the word “office” to “bureau” to describe Vital Statistics.

3701-5-04 – The rule sets forth the procedure for how a birth is filed in an institution. The rule is being revised to remove any language that pertains to an out of institution, or “home birth”, so that information is clearer to understand if a physician or midwife fails to file a birth certificate timely.

3701-5-05–The rule sets forth the procedure of appointing a sub-registrar. The rule is being revised to eliminate the location restriction of where a sub registrar may reside, to ensure that sub registrars are timely approving permits, and to give authority to local vital statistics office to discharge a sub registrar if he or she fails to comply with the duties outlined.

3701-5-06– The rule sets forth the way that a physician or coroner completes the cause of death section of a death certificate. The rule is being revised to clarify that the physician or coroner has 48 hours from the time the death certificate is presented to complete this section, and it also clarifying under what cases a coroner can complete the certificate by using the word “pending”.

3701-5-07– The rule sets forth how a death certificate shall be completed by a coroner if the cause of death is not known when the certificate is presented to the office for completed. The rule is being revised to include “pending – not drug related” as a valid certification statement when drugs have been ruled out, but cause of death is not specifically known.

3701-5-08– The rule sets forth the requirement that all death certificates shall be filed within five days after the date of death. The rule is being clarified that the funeral director shall also ensure that a disposition permit is being requested prior to the burial or cremation of a body. Also, language was added to clarify that if a death certificate is not filed within a reasonable amount of time, the entity that is causing the delay (physician, coroner, or funeral home) shall be reported to the appropriate entity that oversees that party, as an attempt to ensure that the death certificate can be filed.

3701-5-09– The rule sets forth the fees for securing a disposition permit by the sub registrar. The rule is being revised to correct the word ‘burial’ to ‘disposition’ to describe the permit.

3701-5-10– The rule sets forth the requirement of matching death records to Ohio birth records to ensure that birth records of deceased individuals are marked as ‘deceased’ when issued. The rule is being revised to clarify that birth information is also matched to the Ohio death record and this information is affixed to the death record electronically.

3701-5-11– The rule sets forth the preservation of records by the Bureau of Vital Statistics. The rule is being revised to correct the name of the ‘Ohio Historical Society’ to ‘Ohio History Connection’ and removes any mention of provisional death certificates, which is a form no longer used.

3701-5-12– The rule sets forth the disclosure of personal health and medical information from a birth record when requested by an entity for statistical or research purposes. The rule is being revised to specify that the Institutional Review Board agrees on the release of data after they are presented by the research protocol by an entity.

3701-5-16– The rule sets forth the procedure for how a birth is filed if a baby is born out of institution (“home birth”). The rule is being revised to remove any language that pertains to an institutional birth, so that information is clearer to understand if a parent fails to file their child’s birth information within one year of date of birth. Language was also added to allow the vital statistics registrar the ability to file records at his discretion as well as enforce that a court shall file a record over 1 year from the child’s date of birth.

2. Please list the Ohio statute authorizing the Agency to adopt these regulations.

Ohio Revised Code sections 3705.02

3. Do the regulations implement a federal requirement? Are the proposed regulations being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

There are no federal requirements mandating these rules.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Not applicable to these rules.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

The public purpose for this regulation is set forth in Revised Code Section 3705.02 which provides:

A statewide system of registration of births, deaths, fetal deaths, and other vital statistics is hereby established, which shall consist of the office of vital statistics in the department of health and primary registration districts. The office of vital statistics shall be maintained at the capital of the state and

shall be provided with sufficient staff, suitable offices, and other resources for the proper administration of the system of vital statistics and for the preservation of its official records. The director of health shall have charge of the system of vital statistics, enforce sections 3705.01 to 3705.29 of the Revised Code, and prepare and issue instructions necessary to secure the uniform observance of such sections. The director shall adopt rules as necessary to ensure that this state shall have a complete and accurate registration of vital statistics. No system of registration of births, deaths, fetal deaths, or other vital statistics shall be maintained in any political subdivision in conflict with such sections.

6. How will the Agency measure the success of these regulations in terms of outputs and/or outcomes?

The regulations set forth in Chapter 3701-5 of the Ohio Administrative Code are not directly measurable through the standard methods of survey utilized by ODH. ODH is required by statute to ensure that all births, deaths and fetal deaths are filed. We will measure the success of these regulations by the frequency of calls we receive from local registrars and funeral directors regarding the applicability of these regulations to their respective job duties. We will measure it be the number of certificates that are rejected for filing due to errors.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulations.

Each stakeholder received a copy of current rules and the recommended changes:

Rick Frank – Ohio Hospital Association Legislative Liaison
Bryn Hunter – Ohio Hospital Association Representative
Vanessa Niekamp – Board of Funeral Directors and Embalmers Executive Director
Terry Palmer – Ohio Funeral Directors Association President
Betsie Norris - Ohio Adoption Network Advocate
Sandra Taylor – Frankly County Local Registrar
Pam Shears – Delaware County Local Registrar
Robert Morris – Administrative Magistrate for the Courts
David Corey – Coroners Association Executive Director
John McGough – Ohio Funeral Directors Association Lobbyist

8. What input was provided by the stakeholders, and how did that input affect the draft regulations being proposed by the Agency?

No substantive requests for modifications were received during our stakeholder meeting held on September 15, 2015, nor through e-mail after the rules were distributed for review.

9. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

The Ohio Department of Health is required to adopt and maintain a standardized method of collecting, modifying and certifying birth and death information within the system of vital statistics

as specified in Chapter 3705. of the Revised Code. Alternative regulations to the rules being amended were not considered; the rules reflect the current statutory requirements.

10. Did the Agency specifically consider performance-based regulations? Please explain.

A performance based regulation is not appropriate in this instance and is not authorized by Revised Code Chapter 3705.

11. What measures did the Agency take to ensure that these regulations do not duplicate an existing Ohio regulation?

The agency conducted a thorough review of the Ohio Revised Code and Ohio Administrative Code to ensure that there are no other regulations in place regarding Vital Statistics regulations.

12. Please describe the Agency's plan for implementation of these regulations, including any measures to ensure that the regulations are applied consistently and predictably for the regulated community.

The Bureau of Vital Statistics makes the online birth registry, the electronic death system, and applicable forms available for licensed individuals or appointed users. The Bureau of Vital Statistics also receives and acts upon complaints or problems regarding its collection system and routinely updates reports when necessary. The Bureau of Vital Statistics has been established in Ohio since 1908 and ensures that any entity or person within the state can file, change, or receive a copy of a certificate without significant issues.

Adverse Impact to Business

13. Provide a summary of the estimated cost of compliance with these rules. Specifically, please do the following:

a. Identify the scope of the impacted business community:

Obstetrics providers, such as physicians, midwives, and nurses, as well as funeral directors, coroners, and the 113 local vital statistics offices throughout the state.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

The time necessary to complete a birth, death and fetal death certificate, as well as the time to prepare a disposition permit.

c. Quantify the expected adverse impact from the regulation:

The costs associated with these rules remain unchanged from previous versions of the rules. The birth registry system and death registration system are applications developed for the Department of Health and are free to use by authorized user. There is no cost to enter and file information;

however, there is a cost for the certified public record that is filed as part of this process. The cost of the certified birth and death certificates is dependent upon the local offices charging additional fees in addition to the \$7.00 base fee charge as described in Section 3705.24 (A) of the Ohio Revised Code.

14. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

The Agency is required by statute to adopt rules to ensure that the State has a complete and accurate registration of Vital Statistics. Any minimal adverse impact is outweighed by the benefit of having a thorough and accurate system of vital records.

Regulatory Flexibility

15. Does the regulation provide any exemptions or alternative means of compliance for small businesses?

Each birth and death that occurs in Ohio shall be filed. There is no identified impact on small businesses.

16. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

There are no fines or penalties in the Vital Statistics regulations.

ODH is committed to the goal of ensuring that regulated customers have the opportunity to achieve compliance with ODH's procedural requirements. Therefore, when it is both feasible and appropriate, ODH will provide one (1) warning letter to a regulated customer who commits a first time or isolated violation of a "minor" paperwork or procedural requirement. ODH will give the customer a reasonable amount of time to correct the violation, unless:

1. The violation constitutes a failure to comply with federal laws or regulations enforced by ODH, and the penalty is mandated by federal law;
2. The Director of Health or one of his designees has determined that the violation poses an actual or potential threat to the health, safety, or welfare of the general public;
3. The violation involves knowing or willful conduct that may result in conviction for a felony;
4. Failure to impose the penalty would impede or interfere with the detection of criminal activity;
or
5. The violation pertains to the assessment or collection of any monies owed to the state.

This Policy Statement should not be construed as a waiver of ODH's authority to enforce any law or regulation requiring a person or entity to obtain a valid permit or license before engaging in regulated activity, or enforce any other state or federal law.

This policy is available online at:

<http://www.odh.ohio.gov/rules/ombudsman/regulatoryombudsman.aspx>.

17. What resources are available to assist small businesses with compliance of the regulation?

The Ohio Department of Health, Bureau of Vital Statistics provides information and assistance to individuals and providers. Additional information is available at:

<http://www.odh.ohio.gov/vs>

<http://vitalsupport.odh.ohio.gov/GD/Templates/Pages/ODH/ODHDefault.aspx?page=1>