

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES
NOTICE OF PUBLIC HEARING

February 8, 2022
10:00 a.m. Central Time
Nebraska State Office Building – Lower Level A
301 Centennial Mall South, Lincoln, Nebraska
Phone call information: 888-820-1398; Participant code: 3213662#

The purpose of this hearing is to receive comments on proposed changes to Title 174, Chapter 3 of the Nebraska Administrative Code (NAC) – *Viewing and Release of Vital Records*. The proposed changes remove duplicate statutory, unnecessary, or inconsistent language from the regulations; update definitions; outline requirements for application process, burden of proof, and obtaining a certified copy certificate; update process to view a record; establish a process whereby researchers may apply for approval to access information designated on the certificates as being for health data and statistical research purposes; allow additional family members to authorize genealogical use; update formatting and restructure the regulatory chapter.

Authority for these regulations is found in Neb. Rev. Stat. § 81-3117(7).

In order to encourage participation in this public hearing, a phone conference line will be set up for any member of the public to call in and provide oral comments. Interested persons may provide verbal comments in person or by participating via phone conference line by calling 888-820-1398; Participant code: 3213662#.

Interested persons may attend the hearing and provide verbal or written comments, or mail, fax or email written comments, no later than the day of the hearing to: DHHS Legal Services, PO Box 95026, Lincoln, NE 68509-5026, (402) 742-2382 or dhhs.regulations@nebraska.gov, respectively.

A copy of the proposed changes is available online at <http://www.sos.ne.gov>, or by contacting DHHS at the mailing address or email above, or by phone at (402) 471-8417. The fiscal impact statement for these proposed changes may be obtained at the office of the Secretary of State, Regulations Division, 1201 N Street, Suite 120, Lincoln, NE 68508, or by calling (402) 471-2385.

Auxiliary aids or reasonable accommodations needed to participate in a hearing can be requested by calling (402) 471-8417. Individuals who are deaf or hard of hearing may call DHHS at (402) 471-9570 (voice and TDD) or the Nebraska Relay System at 711 or (800) 833-7352 TDD at least 2 weeks prior to the hearing.



TO: Executive Board
Room 2108 State Capitol
Legislative Council

FROM: Marge Respeliers, Paralegal I
Legal Services
Department of Health and Human Services (DHHS)

DATE: December 27, 2021

RE: Notice of Rulemaking under Neb. Rev. Stat. § 84-907.06

The Department of Health and Human Services (DHHS) will be holding a public hearing on amending the following regulations:

TITLE: 174 Vital Records
CHAPTER: 3 Viewing and Release of Vital Records

These regulations are scheduled for public hearing February 8, 2022.

The purpose of this hearing is to receive comments on proposed changes to Title 174, Chapter 3 of the Nebraska Administrative Code (NAC) – *Viewing and Release of Vital Records*. The proposed changes remove duplicate statutory, unnecessary, or inconsistent language from the regulations; update definitions; outline requirements for application process, burden of proof, and obtaining a certified copy certificate; update process to view a record; establish a process whereby researchers may apply for approval to access information designated on the certificates as being for health data and statistical research purposes; allow additional family members to authorize genealogical use; update formatting and restructure the regulatory chapter.

The following items are enclosed for your referral to the chair of the relevant standing committee of the Legislature:

1. A copy of the notice of public hearing;
2. A copy of the proposed regulations;
3. A copy of the Policy Pre-Review Checklist; and
4. The estimated fiscal impact of this rulemaking action on state agencies, political subdivisions or persons being regulated.

FISCAL IMPACT STATEMENT

Agency: Department of Health and Human Services	
Title: 174	Prepared by: Sarah Bohnenkamp
Chapter: 3	Date prepared: 10/22/2021
Subject: Regulations governing viewing and release of Vital Records	Telephone: 402-471-0915

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	(<input checked="" type="checkbox"/>)	(<input checked="" type="checkbox"/>)	(<input checked="" type="checkbox"/>)
Increased Costs	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Decreased Costs	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Increased Revenue	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Decreased Revenue	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Indeterminable	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)

Provide an Estimated Cost & Description of Impact:

State Agency:

Political Subdivision:

Regulated Public:

If indeterminable, explain why:

TITLE 174 VITAL RECORDS

CHAPTER 3 VIEWING AND RELEASE OF VITAL RECORDS

~~3-001.~~ SCOPE. These regulations govern ~~the~~ access to and release of birth, death, marriage, and dissolution of marriage certificates under Nebraska Revised Statutes (Neb. Rev. Stat.) §§ 71-612(1), (6), (7), and (8) and 71-602(2).

~~3-002.~~ DEFINITIONS. The definitions of Neb. Rev. Stat. § 71-601.01 and this chapter apply.

~~002.01~~ APPLICANT. Applicant means a person requesting a certified copy, ~~or a person seeking to view a certificate,~~ or requesting to view confidential information.

~~002.02~~ APPLICATION. Application means a request for a record in writing containing information required by the Department.

~~Certificate means the form used for registration or reporting to the Department the event of birth, death, marriage, or dissolution of marriage as approved by state law or regulation. For purposes of these regulations, certificate includes an abstract of marriage as provided in Neb. Rev. Stat. § 71-601.01 and a certificate of birth resulting in stillbirth as provided in Neb. Rev. Stat. § 71-606. Certificate does not include that portion of the certificate entitled "for health data and statistical research," "information for statistical purposes only" or for "medical or health information only" or similar language except as specifically provided in these regulations. The portion of the certificate designated for "health data and statistical research" is confidential and released only to the United States Public Health Service or its successor, government health agencies, or a researcher as approved by the Department in these rules. The Department may publish analyses of any information received on the forms for scientific and public health purposes in such a manner as to assure that the identity of any individual cannot be ascertained.~~

~~002.03~~ CERTIFIED COPY. Certified copy means a certificate certified by the Department as provided by law.

~~Department means the Department of Health and Human Services~~

~~Family means the parent, spouse, or child of a registrant. Family does not include the biological parent of an adopted child.~~

~~002.04~~ LEGAL REPRESENTATIVE. Legal representative means the registrant's attorney, legal guardian or conservator, custodian, personal representative, executor, or executrix of

the registrant's estate or other person showing lawful authority to act on the registrant's behalf ~~of the registrant.~~

002.05 PROOF OF IDENTITY. ~~Proof of identity means e~~Documentation issued by a federal, state, or local political subdivision, corporation, or other entity, that contains ~~a~~ the applicant's photograph ~~of the applicant and~~, facts identifying the applicant, or other documentary evidence establishing identity.

002.06 PROOF OF QUALIFICATION. ~~Proof of qualification means w~~Written documentation establishing the credentials or authority of the applicant or facts required by these regulations to demonstrate a proper purpose.

002.07 REGISTRANT. ~~Registrant means t~~The individual who is the subject of the vital record.

002.08 RESEARCH. ~~Research means a~~A ~~s~~Systematic statistical study, conforming to or in accordance with generally accepted medical or scientific standards or principles, designed to develop or contribute to medical or scientific knowledge, and which does not identify the persons in the study.

~~3-003. VIEWING OR OBTAINING A CERTIFIED COPY OF A RECORD~~

~~3-003.01 Birth, death, marriage, and dissolution of marriage certificates are public records unless otherwise provided by law or court order and as such, the Department allows said records to be viewed during normal office hours. The applicant must make a request to view the vital record and provide the applicant's name and address.~~

~~3-003.02 An applicant wishing to view a vital record will be provided at the statutory fee a copy of the certificate which will be stamped "NOT A LEGAL DOCUMENT - FOR REVIEW ONLY." This copy will not contain any information contained on that portion of the vital record titled "medical or health information" or "information for statistical purposes only" or similar statistical information not registering the vital event itself.~~

~~3-003.03 Copies of certificates provided to an applicant for review may not be removed from the area provided for viewing. These copies must not be photocopied or reproduced by the applicant. Such copies must be returned to the Department before the applicant leaves the viewing area. An applicant may make and keep notes on the contents of a record.~~

~~3-003.04 The Department will provide no copies of a vital record other than certified copies to an applicant demonstrating a proper purpose except death certificates for scientific research pursuant to Neb. Rev. Stat. § 71-612(5).~~

~~3-003.05 The Department will supply for any proper purpose as defined in 174 NAC 3-004, a certified copy of a birth, death, marriage, or dissolution of marriage record, except as otherwise provided by law or court order. The burden is on the applicant to prove to the Department that a valid proper purpose exists. To obtain a certified copy, an applicant must:~~

~~3-003.05A Provide sufficient information to enable the Department to locate and identify each certified copy requested.~~

~~3-003.05B~~ Pay the statutory fees for each certified copy or each search for a certified copy, whether or not the record is found, unless exempt from payment by law.

~~3-003.05C~~ Provide name and address, telephone number, and proof of identity. More than one document showing proof of identity may be required. If the applicant is involved in medical, scientific, law enforcement, government, genealogical, or historical research, the applicant must provide the name of the any entity, if any, which the applicant represents; the name of the principal investigator, if other than the applicant; qualifications of the applicant, if appropriate; the location where the research will take place; and the means by which the research will take place.

~~3-003.05D~~ Describe the purpose for each certified copy requested and provide satisfactory proof to the Department that the request is for a proper purpose as defined below.

003. VIEWING COPIES OF CERTIFICATES. Applicants who wish to view a copy of a certificate may do so in the Department's office upon payment of the statutory fee.

003.01 CONTENTS OF VIEWING COPIES. Viewing copies will be stamped "NOT A LEGAL DOCUMENT – FOR REVIEW ONLY" and will not include social security numbers, information contained in the portion of the certificate titled "medical or health information" or "information for statistical purposes only," or other statistical information not registering the vital event itself.

003.02 USE OF VIEWING COPIES. Copies may not be removed from the area provided for viewing, photocopied, photographed or electronically stored on any device, or otherwise reproduced by applicants. Copies must be returned to the Department before the applicant leaves the viewing area. Applicants may make and retain notes on the certificate's contents.

004. CERTIFIED COPIES FOR APPLICANTS FOR ANY PROPER PURPOSE. Applicants for any proper purpose as defined in this chapter may obtain a certified copy of a birth, death, marriage, or dissolution of marriage record, except as otherwise provided by law or court order, upon approval of their application by the Department and payment of the statutory fee for each certified copy or search for a certified copy, whether or not the record is found, unless exempt from payment by law.

004.01 APPLICATIONS. Applications may be made in person or by mail or electronic means approved by the Department. Applicants must:

- (A) Furnish sufficient information for the Department to locate and identify each certified copy requested;
- (B) Provide the applicant's name, address, telephone number, and proof of identity. More than 1 document proving identity may be required;
- (C) Describe the purpose for each certified copy requested and provide proof satisfactory to the Department that the request is for a proper purpose as defined in this chapter; and
- (D) If the applicant is involved in medical, scientific, law enforcement, government, genealogical, or historical research, provide the name of any entity that the applicant represents; the name of the principal investigator, if other than the applicant; the

applicant's qualifications, if appropriate; the location where the research will take place; and the means by which the research will take place.

004.02 SUPPLEMENTAL INFORMATION. Supplemental information may be accepted over the phone except when documentation is required and a record of such will be made by the Department.

004.03 BURDEN OF PROOF. Applicants have the burden of proving to the Department that a proper purpose exists. An application may be denied when, upon review of the application and the documentation provided by the applicant or the Department's independent verification of some or all information or proof supplied by the applicant, the Department finds that:

- (A) The reason for which the record is sought is not a proper purpose as defined in this chapter;
- (B) An applicant cannot show proof of identity;
- (C) Information or documentation provided by the applicant is incomplete;
- (D) The certificate or record requested is confidential, sealed, or protected by statute or court order;
- (E) Information or documentation provided by the applicant does not provide the proof necessary for release for a proper purpose; and
- (F) There is reason to believe that an applicant has provided inaccurate or false information.

3-0045. PROPER PURPOSE.: Proper purpose ~~means and~~ includes the following circumstances in this section.:

3-0045.01 PERSONAL USE. Personal Use: Personal use by ~~a registrant~~ registrants of his or ~~her~~ their own certificate, or the registrants' spouse, child, or parent with proof of the requestor's relationship with the registrant of birth, certificate of marriage, or certificate of dissolution of marriage, upon proof of identity.

3-0045.02 LEGAL USE. Legal Use: Use by a ~~registrant, the registrant's family or the registrant's legal representative~~ of a certificate for a legal purpose that requires documentation of a vital event to obtain a legal right or privilege ~~upon proof of identity~~. A legal purpose includes, but is not limited to, the following:

- (A)3-004.02A To establish Establishing the fact of death or identity in a probate or estate action.;
- (B)3-004.02B To transfer Transferring title to a motor vehicle or other personal or real property.;
- (C)3-004.02C To obtain Obtaining government documents such as a driver's license, identification card, social security, passports, or other state or federal licenses, benefits, or certificates.;
- (D)3-004.02D To obtain Obtaining admission to school.;
- (E)3-004.02E To establish Establishing a legal relationship with another person or property right, such as an inheritance, insurance, or dependency benefit.;
- (F)3-004.02F To provide Providing a copy ~~or copies~~ of a certificate of birth resulting in stillbirth to the parent(s) as listed on the fetal death record.

~~3-0045.03~~ CONSENSUAL USE. Consensual Use: Use upon submission by the applicant of the notarized written consent of the registrant, or the parent or guardian of a minor registrant, to obtain the certificate. ~~Such written consent will be retained by the Department and made a part of the application.~~

~~3-0045.04~~ SCIENTIFIC OR MEDICAL USE. Scientific or Medical Use: Use ~~upon proof of identity and qualifications~~ by a researcher employed by a research organization, institution of higher education, university, institution, or government agency, higher education student, or self-employed researcher who is conducting scientific, medical, or public health research of a certificate, so long as there is no publication or disclosure of ~~the name or~~ names or facts ~~that would lead~~ leading to the identity of any person included in the certificate.

~~3-0045.05~~ LAW ENFORCEMENT USE. Law Enforcement Use: Use of a certificate ~~upon proof of identity and employment with~~ by an employee of an agency of the federal government, state government, or political subdivision of the state, charged by law with the duty of detecting or prosecuting crime, ~~or~~ enforcing child support, ~~or~~ establishing paternity.

~~3-0045.06~~ GENEALOGICAL USE. Genealogical Use: Use of a certificate ~~of birth, and death~~ by a person engaged in genealogical research when the person whose certificate is requested has been deceased for 50 or more years, or with the written consent and proof of relationship of the registrant's spouse, parent, child or grandchild in the case of registrants who are alive or have been deceased for less than 50 years.

~~3-004.06A~~ ~~Upon proof of the applicant, when the person whose certificate is requested has been deceased for 50 or more years; or~~

~~3-004.06B~~ ~~Upon proof of identity of the applicant and written consent of the registrant or a member of registrant's family when the registrant is alive or has been deceased less than 50 years.~~

~~3-004.06C~~ ~~A certificate of birth resulting in stillbirth is available only to the parent(s) as listed on the fetal death record. A certificate of birth resulting in stillbirth is not open to the public for genealogical use.~~

~~3-0045.07~~ HISTORICAL RESEARCH. Historical Research: Use by a historical researcher of a certificate upon ~~proof of identity and~~ proof of qualification, ~~including but not limited to~~ documentation that:

~~(A)3-004.07A~~ Applicant possesses academic credentials as a historian from, or is currently ~~majoring in and~~ pursuing a course of study in history in an accredited university, college, institution of higher education or nationally-recognized organization.;

~~(B)3-004.07B~~ Applicant is engaged in a historical research project.;

~~(C)3-004.07C~~ Each certificate requested is relevant to the project.

~~3-0045.08~~ GOVERNMENTAL USE. Governmental Use: Use of a certificate ~~upon proof of identity and employment~~ by employees of federal, state, or political subdivision government agencies for statistical purposes, disease control or prevention, health-related record keeping, and ~~for~~ record keeping required by ~~any state or federal~~ the agency in the course of its official duties.

~~3-0045.09 MEDIA USE. Media Use:~~ Use of a certificate ~~upon proof of identity and employment with~~ by employees of a newspaper, magazine, radio, or television station for the purpose of reporting news to the public.

~~005.10 FUNERAL HOME USE. Use of a death certificate by employees of a funeral home, for certified copies to be provided for decedents' families. The request can be made up to one year from the file date of the death record.~~

~~3-005 PROCESSING REQUESTS~~

~~3-005.01 Certified Copies:~~ The Department will review the application and documentation provided by the applicant to determine whether the criteria for proper purpose are met. In reaching a decision, the Department may conduct independent verification of some or all of the information or proof supplied by an applicant. The Department will deny an application when:

~~3-005.01A~~ The reason for which the record is sought is not a proper purpose as defined in 174 NAC 3-004.

~~3-005.01B~~ An applicant cannot show proof of identity.

~~3-005.01C~~ Information or documentation provided by the applicant is incomplete.

~~3-005.01D~~ The certificate or record requested is confidential, sealed, or protected by statute or court order.

~~3-005.01E~~ Information or documentation provided by the applicant does not provide the proof necessary for release for a proper purpose.

~~3-005.01F~~ There is reason to believe that an applicant has provided inaccurate or false information.

~~3-005.02 Access to Certificates:~~ The Department will not release a certificate or particular information from a certificate or other record for review when a statute makes such information confidential. In these cases, the applicant will be provided a written denial. Any person denied a copy or a portion of a copy may seek review of the Department denial, or denial of particular information, under any of the methods described in Neb. Rev. Stat. § 84-712.03.

~~3-005.03 MAIL REQUEST. Mail Request:~~ Requests by mail for certified copies are permitted if they meet the requirements set out in this chapter. Supplemental information may be accepted over the phone except when documentation is required, and a record of such will be made by the Department.

~~3-005.04 Denial:~~ Any denial of access to or a certified copy of any record will be made in writing by the Department to the applicant. Such denial will clearly set out the reasons for the denial.

006. RELEASE OF CONFIDENTIAL INFORMATION TO APPROVED RESEARCHERS. Researchers may be provided with confidential information as described in Neb. Rev. Stat. § 71-602(2) upon approval of an application as provided in this section or an application made pursuant to the terms of an agreement between the Department and a government health agency to which the Department releases such information under the authority of Neb. Rev. Stat. § 71-602(2).

006.01 APPLICATION. Applicants must submit:

- (A) The qualifications of the applicant and the primary researcher;
- (B) The purpose of the research project and anticipated time of completion;
- (C) Location where the research will take place and the resources available to the applicant to carry out the project;
- (D) The funding resource for the project;
- (E) The specific data being requested and the use of that data;
- (F) Description of the measures being taken to secure the data and maintain the confidentiality of the data;
- (G) How the data will be disposed of at the end of the project; and
- (H) If an Institution's Review Board approved the research, a copy of the approval must be provided.

006.02 DATA PROVIDED. The Department has discretion as to whether data is provided, the scope of any data provided, and the terms and conditions under which data may be used by the applicant.