

FAQs for Municipal Clerks regarding the New Vitals Laws

Effective: July 12, 2010

This Frequently Asked Questions (FAQ) sheet was a collaborative effort of the ODRVS and the Maine Town & City Clerks' Association, created to assist municipal clerks in understanding and implementing the recently approved changes to the laws regarding vital records in Maine.

Background: On April 2, 2010, the Governor signed into law Public Law 601 (formerly known as LD 1781) which is entitled: "An Act To Allow Electronic Filing of Vital Records and Closing of Records To Guard against Fraud and Make Other Changes to the Vital Records Laws:.. This law becomes effective July 12, 2010. PL 601 contains many amendments to MRSA Title 22 (statutes pertaining to vital records) that municipal clerks need to be aware of for implementation at the local level. Several of these amendments are required by the federal government and have already been implemented in many states. The purpose of the law is to restrict access to vital records to those members of the public that need to obtain a copy of the record for direct and legitimate purposes, and to eliminate broad public access to these records. The intent is to eliminate the potential for misuse of these records for identity theft and other fraudulent issues.

The following is a summary of the new law changes that municipal clerks will encounter:

- 1) **Name of Agency (Sec 256-A)** - The name of the State Vitals Office is now the Office of Data, Research and Vital Statistics (ODRVS).
- 2) **Resident copy of Death Certificate (Sec 2702, sub 3)** - A death certificate for anyone who passes away on or after July 12, 2010 will only be on file with the municipality of event/location of the death and the State. Municipalities that have a death occur in that town (towns with hospitals, hospice house, etc.) will no longer be forwarding a copy of the death certificate to the town of residence of the deceased.

DHHS Rules, CMR 10-146 Chapter 11 under Duties of Municipal Clerks states: B. Deaths and Fetal Deaths

- 1) The municipal clerk is responsible for the receipt and processing of records of deaths and fetal deaths occurring within the municipality. This includes receiving the records from the funeral director, institution (in the case of fetal deaths), physician or authorized person; checking them for accuracy and completeness; forwarding them to the state registrar within 7 days after receipt, on a weekly basis; and forwarding copies, at the same time, to the place of residence of the deceased person, if different from the place where death occurred.

The practice of forwarding paper copies to the place of residence will continue during phase in of the Electronic Death Registration System (EDRS).

- 3) **Amending Records and Incomplete Certificates (Sec 2705, sub 1 & 2)** – Administrative corrections of clerical errors need to be done within 90 days, from the date of filing (use the 90 day schedule in the marriage section of the Handbook for quick tabulation of the 90 day time period) rather than one year, after the date of filing in order to not cause the certificate or record to be considered altered or amended. Incomplete certificates and records must be completed within 90 days, rather than one year, without being considered altered or amended.

Corrections/completions after 90 days will require the current fee to accompany the request for correction/completion; however, this fee includes a certified copy of the record after the correction/completion is processed.

- 4) **Child Not Born of Marriage (Sec 2706, sub 1)** – This eliminates the distinction of out of wedlock births from legitimate births. All birth records are now the same. Are birth records of unmarried mothers available to family members?

See question 1 below.

5) Record over 100 years old (Sec. 2706, sub 7) – All vital records that are 100 years old shall be available to the public for inspection and the purchase of informational (non-certified) copies.

Records from 1892 - 1910 are open and require no identification requirement for issuance. Please remember that confidential records such as adoptions and legitimations are still confidential and do not qualify as an open record. If a book has open records and confidential records, then open access to the book is not permitted. If a request is received for a certified copy of an open record, then proof of direct and legitimate interest must be presented as well as identification in order to issue the certified copy of an open record.

6) Certified copies of vital records (Sec 2706, sub 5) **Certified copies of birth, marriage and death records are now only available for inspection and purchase to the following individuals: self/own record, spouse, registered domestic partner, parents, descendants, guardian, that person’s attorney or that person’s agent.**

Individuals who have a “direct and legitimate interest” as well as individuals specified as “Other related individuals” as defined in DHHS- ODRVS Rules 10-146 CMR Chapter 8: Definition: Direct and Legitimate Interest. The following individuals and entities shall be deemed to have a “direct and legitimate interest” in the data contained in a vital record:

- 1) Registrant or related individual;
- 2) Federal or State agencies, Maine municipal governments and Maine public school districts, any which may require such data for administrative purposes in the conduct of their official duties; and
- 3) Those individuals conducting health, medical, and social research, including those in governmental agencies, which have potential for reducing morbidity and mortality within Maine, for furthering scientific understanding of disease processes, or for improving health and social services.
- 4) Others may be authorized to obtain confidential data when they demonstrate that such information is needed for the determination or protection of personal property rights.

Media representatives and commercial firms other than those conducting health, medical or social research shall not be considered to have a direct and legitimate interest.

Definition: Related Individual. “Related individual” means a member of the immediate family of the registrant or descendants thereof, the registrant’s legal custodian or guardian, or their respective authorized representatives. “Authorized representative” shall include an attorney, physician, or funeral director. Other agents authorized in writing to act in behalf of the registrant or his or her immediate family or descendants thereof are also considered to be related individuals for the purpose of this chapter. The biological parents of adopted children, when neither has custody, shall not be considered to be related individuals for the purposes of this chapter.

The following is a list of FAQs regarding the new changes:

1) Q: As of July 12, 2010, who can no longer obtain a certified copy of a vital record?

A: The following individuals are not entitled to obtain a certified copy of a vital record: grandparent, sibling, step-parent, step-child, aunt, uncle, niece, nephew, cousin, mother-in-law, father-in-law, *boyfriend*, *girlfriend*, *fiancé*, friend, neighbor, *ex-spouse* or genealogist. (See matrix for additional clarification.)

Individuals italicized must present documents specifying a direct and legitimate interest or for determination of personal and property rights allowing them access to the records.

In Maine, “spouse” means persons named in any marriages recognized by the State of Maine. Same sex marriages that are officiated in other states are not recognized in Maine: Maine does not recognize “common law marriage”.

2) Q: What are the requirements a person obtaining a certified copy of a vital record need to do?

A: For someone to purchase a certified copy, they need to:

- 1) Complete a vitals record order form (see sample provided by ODRVS)
- 2) Show proof of identification
- 3) Show proof of lineage, if applicable

3) Q: What are the acceptable proofs of identification?

A: Driver’s license, passport or other government issued picture identification card (e.g. Military ID).

4) Q: What if the customer does not have any of the forms of ID listed above?

A: The customer then needs to present two items from the following list with their name on it: utility bills, bank statements, car registration, copy of income tax return, personal check with address, a previously issued vital record/marriage license, letter from government agency requesting vital record (e.g., DHHS, WIC), Department of Corrections identification card, Social Security card, DD214, hospital birth worksheet, license/rental agreement, pay stub (W-2), voter registration card, or disability award from SSA; Medicare/Medicaid insurance cards, school picture IDs, employee photo ID badge; other secondary forms of identification may also be considered that contain the name, date of birth and address of an individual.

5) Q: What if the customer still cannot produce any of the forms of ID listed above?

A: Alternately, the record could be obtained for the customer by another qualifying individual with positive identification, such as a parent for a child. If an instance occurs where there appears to be no documents for identification, call the Vital Statistics office for further assistance at 287-3771.

6) Q What does “direct and legitimate interest” mean?

A: In order for vital records information to be released, a person must prove that they are permitted by law to see the vital records requested. Those with a “direct and legitimate interest” include:

- 1) The person named on the record
- 2) The person’s spouse or registered domestic partner
- 3) The parent(s) named on the record
- 4) Descendants of the person named on the record (includes children, grandchildren, great grandchildren to the most remote degree)
- 5) Registrant’s legal custodian or guardian or respective authorized representative (includes attorney, physician, or funeral director)
- 6) Genealogists who have a Maine CDC/ODRVS issued researcher identification card

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- 1) Registrant or related individual;
- 2) Federal or State agencies, Maine municipal governments and Maine public school districts, any which may require such data for administrative purposes in the conduct of their official duties; and
- 3) Those individuals conducting health, medical, and social research, including those in governmental agencies, which have potential for reducing morbidity and mortality within Maine, for furthering scientific understanding of disease processes, or for improving health and social services.
- 4) Others may be authorized to obtain confidential data when they demonstrate that such information is needed for the determination or protection of personal property rights.

Media representatives and commercial firms other than those conducting health, medical or social research shall not be considered to have a direct and legitimate interest.

Definition: Related Individual. "Related individual" means a member of the immediate family of the registrant or descendants thereof, the registrant's legal custodian or guardian, or their respective authorized representatives. "Authorized representative" shall include an attorney, physician, or funeral director. Other agents authorized in writing to act in behalf of the registrant or his or her immediate family or descendants thereof are also considered to be related individuals for the purpose of this chapter. The biological parents of adopted children, when neither has custody, shall not be considered to be related individuals for the purposes of this chapter.

7) Q: How would a person demonstrate lineage?

A: In order to establish lineage when requesting records concerning parents, grandparents, etc., a copy of the requestor's birth certificate will identify his or her parents of record. Using this document, the marriage record of the parents would be a next step, as it will identify the grandparents of record, and so on.

7.1) Q: What are acceptable forms for proof of lineage?

A: Hospital or physicians record of birth or death; baptismal record; school enrollment records; marriage record; military record; court record; family bible record; newspaper birth announcement; U.S. Census enumeration record; insurance application; affidavit; obituary; engagement announcement; marriage announcement; birth announcement.

8) Q: Why is proof of identification and proof of lineage required?

A: While most requests for vital records are honest attempts to obtain one's own personal documentation, some are not; some are attempts to obtain information and documents needed to assume another person's identity. These documents can be used to obtain a driver's license, state photo ID, social security card, and passport under the assumed name, opening the door to credit card, bank and tax fraud; mail theft, and social security and insurance fraud. The requirement that customers provide positive identification when requesting a copy of a record helps to protect both the customer and their family from this type of crime.

Proof of identification and proof of lineage are required to be presented at the time the customer is purchasing a certified copy in order to ensure compliance with the new regulations. Since vital records are now available to only a specific number of people, the municipal clerk must be assured that he/she is selling the certified copy to someone who is entitled to have a copy of that record. This will also help to prevent fraud and identity theft with use of vital records.

8.1) Q: Who are descendants?

A: Descendants of the person named on the record includes children, grandchildren, and great grandchildren to the most remote degree

9) Q: What documentation does a guardian or conservators need to present?

A: In addition to proof of identification, they must also show a copy of the paperwork from the court appointing them as the guardian of that person.

9.1) Q: Is an "Authorized Representative" required to have a notarized letter stating the authorization?

A: Authorized Representatives must present a notarized letter from a family member or legal representative; other documents could be a POA; legal document establishing the relationship for issuance of record e.g. Veteran's Letter on VA Letterhead specifying required documents.

10) Q: An attorney is someone who can obtain a certified copy of a vital record. What sort of document do they need to present before purchasing a record?

A: The attorney needs to present a notarized statement from the person whose record it is if it is a birth or marriage record, and a notarized statement from the family stating they are representing the estate of the deceased person if obtaining a death certificate.

11) Q: Does the municipal clerk need to keep a copy of the notarized statement presented by the attorney? Do municipal clerks need to retain copies of identification presented?

A: No

12) Q: Who would be considered an “agent” of the person?

A: An agent for that person would be the funeral home handling the arrangements, an informant on the death certificate, an authorized person handling the body after death, a next of kin and a person appointed as an executor of the estate. Agent would apply to birth, death, fetal death and marriage records.

Definition: Related Individual. “Related individual” means a member of the immediate family of the registrant or descendants thereof, the registrant’s legal custodian or guardian, or their respective authorized representatives. “Authorized representative” shall include an attorney, physician, or funeral director. Other agents authorized in writing to act in behalf of the registrant or his or her immediate family or descendants thereof are also considered to be related individuals for the purpose of this chapter. The biological parents of adopted children, when neither has custody, shall not be considered to be related individuals for the purposes of this chapter.

13) Q: What sort of documentation does an agent need to show when purchasing a certified copy of a vital record (birth, death, fetal death or marriage)?

A: The funeral home would be presenting the death certificate of that person, so that is acceptable proof. The informant is listed on the death certificate and therefore would not need to show any documentation other than proof of identification. An authorized person handling the body after death would be listed on the death certificate and therefore would not need to show any documentation other than proof of identification. Next of kin would need to show copies of birth certificates or marriage certificates to show proof of lineage to that person (proof needs to be demonstrated to make a connection from the requestor of the record to the person whose name is on the record). An executor would need to present paperwork from the court showing they have been appointed as the executor of that person’s estate.

14) Q: How long do municipal clerks retain the vital records order forms, once the order has been filed?

A: See Maine State Archives regulations for disposition of records.

15) Q: If a parent(s) name is not listed on a birth, death, fetal death, or marriage certificate, can he/she purchase a certified copy of that record?

A: No, he/she cannot purchase a certified copy of that record because the municipal clerk will not have any name to match on the record. The parent will show you proof of identification to prove who he/she is, but you do not have a name on the record to match it to. However, if a parent is not listed on a birth record, the child has passed away, and the death record contains the parent's name, presenting a certified copy of the death record of child would prove lineage, therefore allowing access to the birth record.

16) Q: How do municipal clerks handle telephone orders for certified copies of vital records?

A: Issuance of records requires proof of identification, and proof of lineage if applicable.

17) Q: How do municipal clerks handle requests for certified records from genealogists?

A: Under the new law (Sec. 2706, sub 8) genealogists are permitted to inspect records of birth, marriage and death and may obtain noncertified copies of these records after they present a researcher identification card issued by the Maine CDC/ODRVS. If a certified copy of a record is requested by a genealogist, they would need to meet the same requirements for issuance of record as anyone requesting a certified copy of a record.

18) Q: How should municipal clerks handle requests (in person and over the phone) for verification of records from military recruiters?

A: Treat as "Authorized Representative"; no telephone verifications for military recruiters will be done as proof of identity is required prior to releasing/issuing a record or the data on the record. A military recruiter can have the individual accompany them as proof for release of data or the military recruiter can supply a notarized authorization in the absence of the individual.

19) Q: How should municipal clerks handle requests for verification of records from the Social Security Administration?

A: Treat as "Authorized Representative"; Social Security is a government agency and the request for verification must include accompanying SSA letterhead.

20) Q: A granddaughter comes into Anytown Town Office to purchase a certified copy of her maternal grandmother's birth certificate. Granddaughter has to show proof of identification and proof of lineage. Granddaughter needs to show her own birth certificate and her mother's birth certificate to show the connection between requestor (granddaughter) and the person listed on the record (grandmother). All of these births occurred in Anytown. If the

requestor does not have copies of these birth records to present, is the municipal clerk of Anytown now looking up all of these records for free for this customer, in order to confirm lineage? Is Anytown permitted to charge the customer a search fee for each record the office staff needs to research?

A: Municipalities are permitted to set their own fees for researching records and are allowed to set their own office practices related to this. ODRVS recommends not performing any free searches. All searches processed at the Vital Records Unit must be paid for as there is no option to waive fees. As an alternative, customer could show an obituary or marriage announcement as proof of lineage.

21.1) Q: Can Grandma purchase a grandchild's birth record?

A: Grandma currently cannot purchase a grandchild's birth record; however, if Grandma brings a notarized letter authorizing her to purchase the vital record(s), then with proof of identification of Grandma, the order can be filled.

22) Q: Will the short form version of a certified copy of a death certificate still be available and, if so, who is entitled to obtain a copy of one?

A: Yes, anyone who is entitled to the full death certificate may receive a certified copy of the short form death record.

23) Q: Our customer says she needs to obtain a certified copy of her ex-spouse's death certificate in order to take his name off of the mortgage. What is she able to obtain?

A: See answer to question 6.

24) Q: Who can purchase non-certified copies of vital records?

A: Anyone who can purchase a certified copy of a record; the only exception is for a registered genealogist who presents a Maine CDC/ODRVS researcher card with proof of identification.

25) Q: What items are considered confidential on Vital Records?

A: As specified in M.R.S.A. Title 22§2706, sub 4. It is unlawful for any employee of the State or of any municipality in the State to disclose data contained in such records, except as authorized in this section and except that a clerk of a municipality may cause to be printed in the annual town report the births reported within the year covered by the report by number of births and location by city or town where birth occurred, deaths reported within the year covered by the report by date of death, name, age and location by city or town where death occurred, and marriages reported within the year covered by the report by names of parties and date of marriage. All

other details of birth, marriage, divorce or death may not be available to the general public, except as specified in department rules.

26) Q: Why is “cause of death” on a death certificate considered confidential?

A: Cause of death is confidential because of the potential impact of its general release on individuals and families. For example, in the 1980s, there was some urgency to ensure that medical information from the death certificate was not revealed to the public when HIV/AIDS was first identified. The concern was that people would identify individuals who had been diagnosed with the condition, and use the information to discriminate against family members, partners, and descendants of the deceased.

27) Q: Is additional identification required for a mother requesting her child’s birth record if the mother’s current last name on the Photo ID does not correlate to that on the birth record?

A: Additional identification is not required. If the current last name of the mother does not correlate to that as listed on the birth record, the identification provided will contain the same first name and date of birth that will match that listed on the birth record; additionally, the application the mother completes for the birth record request will contain the maiden name of the mother and can also be matched to that listed on the birth record.

28) Q: What is the difference between a genealogist researching records and a descendant and which records are available to either party?

A: A genealogist is described in statute as a genealogical researcher who has obtained a Researcher ID card from the Maine CDC/ODRVS and may only request non-certified copies of birth, death, and marriage. A genealogist must present picture id as well as the Maine CDC/ODRVS researcher card and pay the current fee for the record requested in order to obtain copies of the records.

A descendant is an individual researching their own direct lineage. In order for a descendant to obtain copies (certified or non-certified) he/she must present identification and documents that show the lineage e.g. their birth record, parents’ marriage record, grandparents’ marriage record etc. in direct ascension, with the current fee for the record requested. See additional items listed in questions 4 (Child Not Born of Marriage) and 20 (Grand daughter access to grandmother’s birth certificate).