

ILLINOIS REGISTER

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Illinois Vital Records Code
- 2) Code Citation: 77 Ill. Adm. Code 500
- 3)

| | |
|-------------------------|-------------------------|
| <u>Section Numbers:</u> | <u>Proposed Action:</u> |
| 500.10 | Amend |
| 500.15 | New |
| 500.25 | New |
- 4) Statutory Authority: Vital Records Act [410 ILCS 535]; Gestational Surrogacy Act [750 ILCS 47]; Illinois Parentage Act of 1984 [750 ILCS 45]
- 5) A Complete Description of the Subjects and Issues Involved: Rules were needed for gestational surrogacy births to ensure the establishment of a parent-child relationship between a child and his or her intended parents when the child is being carried by a gestational surrogate prior to the birth of the child, and to ensure that the intended parents' names, irrespective of gender or marital/civil union status, are entered on the child's birth record. The Definitions Section is being amended to include definitions from the Gestational Surrogacy Act. A "Referenced Materials" Section is being added to the rules. A new Section 500.25 (Gestational Surrogacy Births) is being added to set forth requirements for a process for establishing a parent-child relationship prior to the birth of the child between a child and his or her intended parents when the child is being carried by a gestational surrogate.

The economic effect on this proposed rulemaking is unknown. Therefore, the Department requests any information that would assist in calculating this effect.

The Department anticipates adoption of this rulemaking approximately six months after publication of the Notice in the *Illinois Register*.
- 6) Published studies or reports, and sources of underlying data used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No

ILLINOIS REGISTER

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

- 10) Are there any other proposed rulemakings pending on this Part? Yes

| <u>Section Number</u> | <u>Proposed Action</u> | <u>Ill. Reg. Citation</u> |
|-----------------------|------------------------|---------------------------|
| 500.10 | Amend | |
| 500.50 | Amend | |

- 11) Statement of Statewide Policy Objectives: This rule will not have an effect on units of local government.

- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking:

Interested persons may present their comments concerning this rulemaking within 45 days after the publication of this issue of the *Illinois Register* to:

Susan Meister
Division of Legal Services
Illinois Department of Public Health
535 W. Jefferson St., 5th floor
Springfield, Illinois 62761

217/782-2043
e-mail: dph.rules@illinois.gov

- 13) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: None

B) Reporting, bookkeeping or other procedures required for compliance: None

C) Types of professional skills necessary for compliance: None

- 14) Regulatory Agenda on which this rulemaking was summarized: This rule was not included on either of the two most recent Regulatory Agendas because the need for the rulemaking was not apparent when the Regulatory Agendas were prepared.

The full text of the Proposed Amendments begins on the next page:

ILLINOIS REGISTER

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

TITLE 77: PUBLIC HEALTH
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER e: VITAL RECORDS

PART 500
ILLINOIS VITAL RECORDS CODE

Section

| | |
|---------------|---|
| 500.10 | Definitions |
| <u>500.15</u> | <u>Referenced Materials</u> |
| 500.20 | Access to Vital Records |
| <u>500.25</u> | <u>Gestational Surrogacy Births</u> |
| 500.30 | Delayed Records of Birth |
| 500.40 | Amendments, Additions or Corrections to Vital Records |
| 500.43 | Amendments to Birth Records Following Gender Re-assignment |
| 500.45 | New Certificates of Birth |
| 500.47 | Illinois Adoption Registry and Information Exchange |
| 500.50 | Transportation and Disposition of Dead Human Body |
| 500.60 | Court Order to Restore Original Certificate of Birth |
| 500.70 | Availability of Medical and Health Information |
| 500.80 | Appointment and Removal of Local Registrars |
| 500.90 | Social Security Numbers of the Mother and Father of an Infant |

500.APPENDIX A Birth Records

| | |
|--------------------|---|
| 500.ILLUSTRATION A | Certificate of Live Birth |
| 500.ILLUSTRATION B | Information For Medical and Health Use Only |
| 500.ILLUSTRATION C | Record of a Foreign Birth |
| 500.ILLUSTRATION D | Certificate of Birth – Foundling Child |
| 500.ILLUSTRATION E | Application for Search of Birth Record Files |
| 500.ILLUSTRATION F | Application for Correction of a Birth Certificate |

500.APPENDIX B Delayed Birth Records

| | |
|--------------------|--|
| 500.ILLUSTRATION A | Instructions for Filing a Delayed Record of Birth for a Child Age One to Seven Years |
| 500.ILLUSTRATION B | Delayed Record of Birth |
| 500.ILLUSTRATION C | Filing a Delayed Record of Birth After the Seventh Birthday |
| 500.ILLUSTRATION D | Application for Delayed Record of Birth |
| 500.ILLUSTRATION E | Delayed Record of Birth (Registered After Seventh |

ILLINOIS REGISTER

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

| | |
|--------------------|---|
| | Birthday) |
| 500.ILLUSTRATION F | Affidavit in Support of an Application for a Delayed Registration of Birth |
| 500.APPENDIX C | Marriage Application and Record |
| 500.APPENDIX D | Certificate of Dissolution, Invalidity of Marriage or Legal Separation |
| 500.APPENDIX E | Adoption Records |
| 500.ILLUSTRATION A | Certificate of Adoption |
| 500.ILLUSTRATION B | Information Concerning Adoptive Parents |
| 500.ILLUSTRATION C | Information Concerning Parents |
| 500.ILLUSTRATION D | Instructions for Adoption Registry Forms |
| 500.ILLUSTRATION E | Birth Parent Registration Identification Form |
| 500.ILLUSTRATION F | Instructions for Adoptee Registration (Repealed) |
| 500.ILLUSTRATION G | Adopted Person Registration Identification Form |
| 500.ILLUSTRATION H | Information Exchange Authorization Form |
| 500.ILLUSTRATION I | Denial of Information Exchange Form |
| 500.ILLUSTRATION J | Instructions for Applying for a New Birth Certificate for a Legitimated Child |
| 500.ILLUSTRATION K | Surrendered Person Registration Identification Form |
| 500.ILLUSTRATION L | Non-surrendered Birth Sibling Registration |
| 500.ILLUSTRATION M | Adoptive Parent Registration Identification Form |
| 500.ILLUSTRATION N | Legal Guardian Registration Identification Form |
| 500.ILLUSTRATION O | Adoption Registry Application Form |
| 500.ILLUSTRATION P | Medical Questionnaire Form |
| 500.APPENDIX F | Death Records |
| 500.ILLUSTRATION A | Certificate of Fetal Death |
| 500.ILLUSTRATION B | Medical Examiner's – Coroner's Certificate of Death |
| 500.ILLUSTRATION C | Medical Certificate of Death |
| 500.ILLUSTRATION D | Application for Search of Death Record Files |
| 500.ILLUSTRATION E | Corrected Cause of Death Certification |
| 500.ILLUSTRATION F | Application for Correction of a Death Certificate |
| 500.APPENDIX G | Death Records |
| 500.ILLUSTRATION A | Report of Death |
| 500.ILLUSTRATION B | Necropsy (NEC)1 |
| 500.ILLUSTRATION C | Permit for Disposition of Dead Human Body |
| 500.ILLUSTRATION D | Coroner's or Medical Examiner's Permit to Cremate a Dead Human Body |
| 500.ILLUSTRATION E | Application for Disinterment – Reinterment Permit |
| 500.APPENDIX H | Affidavits |

ILLINOIS REGISTER

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

| | |
|--------------------|---|
| 500.ILLUSTRATION A | Affidavit by Mother |
| 500.ILLUSTRATION B | Affidavit by Father |
| 500.ILLUSTRATION C | Affidavit and Certificate of Correction |
| 500.ILLUSTRATION D | Abstract of a Record |
| 500.APPENDIX I | Subregistrar's Appointment Blank |

AUTHORITY: Implementing and authorized by the Vital Records Act [410 ILCS 535], Adoption Act [750 ILCS 50], and *Jane Doe II v. Lumpkin*, United States District Court, Central District of Illinois, Case No. 89-1224.

SOURCE: Amended April 7, 1976, effective May 1, 1976; amended at 6 Ill. Reg. 3880, effective March 29, 1982; codified at 8 Ill. Reg. 8917; emergency amendment at 15 Ill. Reg. 3593, effective February 20, 1991, for a maximum of 150 days; emergency expired July 22, 1991; amended at 15 Ill. Reg. 11706, effective August 1, 1991; emergency amendment at 24 Ill. Reg. 3885, effective February 25, 2000, for a maximum of 150 days; emergency expired July 24, 2000; amended at 24 Ill. Reg. 11882, effective July 26, 2000; amended at 35 Ill. Reg. 16682, effective October 3, 2011; amended at 37 Ill. Reg. _____, effective _____.

Section 500.10 Definitions

"Act" means the Vital Records Act [410 ILCS 535].

"Adoption Act" refers to the Act located at 750 ILCS 50.

"Affiant" means the person signing the correction form.

"Certificate" means an officially registered Certificate of Live Birth, Delayed Record of Birth, Medical Death, Medical Examiner's/Coroner's Death, or Fetal Death (Stillbirth).

"Certified court order", "court order", "appropriate court order", and "court determination" mean an order entered by a court of competent jurisdiction which order is certified by the clerk of the court, dated, and which order includes the full information required by the State Registrar to amend, correct, replace, impound, open, or create a vital record without reference to any other document.

"Correction" means the administrative correction or amendment of a certificate to reflect the correct information at items where incorrect information has originally

ILLINOIS REGISTER

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

been entered; or the addition of correct information for items previously omitted from the certificate. "Correction" does not mean to enter on the certificate facts different from those which existed at the time of the event.

"Correction form" means the standard correction form, "Affidavit and Certificate of Correction," prescribed by the State Registrar.

"Court of competent jurisdiction" means any Circuit Court in Illinois, any United States District Court, any equivalent court in any state or United States territory, any tribal court of any of the Indian Nations located within the United States, and any appellate level court in the United States. "Court of competent jurisdiction" does not include any administrative body or tribunal without general trial jurisdiction.

"Custodian" means the State Registrar of Vital Records, local registrars, or county clerks.

"Delayed birth registration" means the registration of any birth that was not registered within 3 days after the event and includes:

the registration of a birth that occurred more than 3 days, but less than one year prior to the application for registration;

the registration of a birth that occurred more than one year, but less than 7 years prior to the application for registration; and

the registration of a birth that occurred more than 7 years prior to the application for registration.

"Department" means the Illinois Department of Public Health.

"Final disposition" means the burial, cremation, or other disposition of a dead human body, fetus, or parts of a dead human body or fetus, including depositing in a vault or tomb, removal from the State, or use by a hospital or other institution for medical or scientific study in accordance with the Cadaver Act [410 ILCS 510] (and Section 8 of the Uniform Anatomical Gift Act [755 ILCS 50/8].

"Funeral director or person acting as such" means a person licensed in the State of

ILLINOIS REGISTER

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

Illinois to practice funeral directing, or a person acting under the direction or supervision of an Illinois licensed funeral director as an employee or an associate of the funeral director.

“Gestational surrogacy” means the process by which a woman attempts to carry and give birth to a child created through in vitro fertilization using the gamete or gametes of at least one of the intended parents and to which the gestational surrogate has made no genetic contribution. (Section 10 of the Gestational Surrogacy Act [750 ILCS 47])

“Gestational surrogacy contract” means a written agreement regarding gestational surrogacy. (Section 10 of the Gestational Surrogacy Act)

“Gestational surrogate” means a woman who agrees to engage in a gestational surrogacy. (Section 10 of the Gestational Surrogacy Act)

“Intended parent” means a person or persons who enters into a gestational surrogacy contract with a gestational surrogate pursuant to which he or she will be the legal parent of the resulting child. (Section 10 of the Gestational Surrogacy Act) The intended parent or parents can be married, in a civil union, or single.

"Legal representative" refers to:

an attorney acting on behalf of a person (s) named on a birth certificate;

an agent authorized by power of attorney;

a court-appointed personal representative;

an agent with written, notarized authorization from a person (s) named on a birth certificate for the purpose of obtaining a certified copy for that person; or

any other agent, approved by the State Registrar as a legal representative of the person to whom the birth certificate relates.

"Major correction" includes, but is not limited to, any administrative correction

ILLINOIS REGISTER

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

made more than one year after the date of the occurrence, or an administrative correction made within one year of the date of the occurrence relating to these items (except as provided in Section 500.40(f)(3)(D) of this Part):

significant changes in the surname of the registered person;

on births, changes in the date or place of the occurrence; the parent(s) age(s), if changed more than 2 years;

changes in the cause of death;

the identity of the parent(s) on the birth certificate; changes in marital status; or

the birthdate and/or age of the decedent on a death certificate; or, other like circumstances.

Any other item corrected within one year of the occurrence is considered a "minor correction."

"Minor correction" means any administrative correction made within one year of the occurrence not meeting the criteria of a major correction.

"Personal services contract" means a contract between a unit of the State or local government body and an individual or a firm for the provision of services to the unit of the State or local government.

"State Registrar" means the State Registrar of Vital Records.

(Source: Amended at 37 Ill. Reg. _____, effective _____)

Section 500.15 Referenced Materials

The following Illinois statutes and administrative rules are referenced in this Part:

- a) Freedom of Information Act [5 ILCS 140]
- b) State Records Act [5 ILCS 160]

ILLINOIS REGISTER

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

- c) Vital Records Act [410 ILCS 535]
- d) Article 8, Part 21 of the Code of Civil Procedure [735 ILCS 5/Art. 8, Part 21]
- e) Illinois Parentage Act of 1984 [750 ILCS 45]
- f) Gestational Surrogacy Act [750 ILCS 47]
- g) Adoption Act [750 ILCS 50]
- h) Access to Records of the Department of Public Health (2 Ill. Adm. Code 1127)

(Source: Added at 37 Ill. Reg. _____, effective _____)

Section 500.25 Gestational Surrogacy Births

- a) A process for establishing a parent-child relationship between a child and his or her intended parent or parents when the child is being carried by a gestational surrogate shall be completed prior to the birth of the child in accordance with Section 12 of the Vital Records Act, Section 6 of the Illinois Parentage Act of 1984, and the Gestational Surrogacy Act.
- b) At least one of the intended parents/co-parents must be the biological parent (egg or sperm donor) of the child being carried by the gestational surrogate.
- c) The name or names of the intended parent or parents, irrespective of gender or marital/civil union status, shall be entered on the child's birth record so long as the intended parent is a party to or both intended parents are parties to an otherwise lawful gestational surrogacy contract.
- d) The names of the gestational surrogate and the gestational surrogate's husband/civil union partner, if any, are not placed on the child's birth certificate.
- e) All parties and spouses/partners involved in the surrogate arrangement must sign certified statements consenting to the establishment of the child's parentage (see Appendix J).

ILLINOIS REGISTER

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

- f) A physician licensed to practice medicine in all its branches in the State of Illinois must sign a certified statement that the child being carried by the gestational surrogate is the child of the intended parent/co-parent or parents/co-parents and that neither the gestational surrogate nor the gestational surrogate's husband/civil union partner, if any, is a biological parent of the child being carried by the gestational surrogate. (Section 6(a) of the Illinois Parentage Act of 1984)
- g) The attorneys representing the intended parent/co-parent or parents/co-parents and the gestational surrogate and her husband/civil union partner, if any, must each sign a separate certified statement that the parties have signed a gestational surrogacy contract and that this contract satisfies the requirements of Section 25 of the Gestational Surrogacy Act. (Section 6(a) of the Illinois Parentage Act of 1984)
- h) The certified statements must be on forms prescribed by the Department and executed prior to the birth of the child (see Appendix J).
- i) The certified statement must be witnessed by two competent adults age 18 or older who are not the parties and spouses/civil union partners involved in the surrogate arrangement.
- j) The original certified statements, not photocopies, must be delivered to the director of medical records in the hospital of planned delivery prior to the birth of the child. These original statements are to be placed in the medical record of the gestational surrogate. (Section 6(a) of the Illinois Parentage Act of 1984)
- k) If a surrogate birth occurs in an Illinois hospital other than the hospital planned for the delivery, the person preparing the birth certificate must be advised of the existence of the surrogate parentage statements. The birth record preparer should immediately contact the Department's Division of Vital Records, or the hospital where the birth was planned, for a copy of the surrogate parentage statements and also request that the original surrogate parentage statements be forwarded to the delivering hospital for inclusion in its medical records files.
- l) A photocopy of all of the certified statements shall be filed, at no charge, with the Department's Division of Vital Records prior to the birth of the child at the

ILLINOIS REGISTER

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

following address:

Illinois Department of Public Health
Division of Vital Records
925 East Ridgely Ave.
Springfield, IL 62702-2737

- m) The Gestational Surrogacy Act does not apply if the gestational surrogate delivers the child outside of Illinois or if she is the biological mother of the child.

(Source: Added at 37 Ill. Reg. _____, effective _____)