



STATE OF WASHINGTON  
DEPARTMENT OF HEALTH

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October 25, 2022

**TO:** Michelle Davis, Executive Director  
Washington State Board of Health

**FROM:** Jerrod Davis, Assistant Secretary   
Division of Disease Control and Health Statistics

**SUBJECT:** Request for Delegation of Rulemaking Authority for WAC 246-491-029.

The Department of Health (department) requests the authority to propose and adopt changes to WAC 246-491-029, Confidential information on state of Washington live birth and fetal death certificates, under chapter 70.58A RCW.

The department registers and certifies all vital events that occur in Washington state. Vital events include birth, marriage, divorce, death, and fetal death. Three significant statutory changes to vital records precipitated a need for rulemaking. First, passage of the Uniform Parentage Act in 2018 included surrogacy in the birth registration process and recognized the diversity of families and non-biological parent-child relationships. Next, the Legislature added chapter 70.58A RCW, Vital Statistics in 2019. Two sections took effect in 2019 and the remaining sections of the chapter took effect on January 1, 2021. Chapter 70.58A RCW made clarifications, added an amendment process, and added an administrative hearing. Additionally, the Legislature added a certification of birth resulting in stillbirth in 2021.

The Center for Health Statistics (CHS) needs to update existing rules to implement the new statutory requirements and processes. These statutory changes directly affect registration and certification of vital records, including live birth and fetal death.

## **Purpose of Rulemaking**

CHS identified several reasons to consider amending WAC 246-491-029:

- Update terms to reflect the current statute and gender-neutral language.
- Add surrogacy terms.
- Add homeless status to the confidential statistical items.
- Align statistical items with the National Center for Health Statistics (NCHS) standards for birth and fetal death.

## **Potential Changes to the Rule**

The department has identified the following changes that could occur during rulemaking:

- adding or removing statistical items in Tables 1 and 2,
- changing terms in Tables 1 and 2, and
- non-substantive editorial changes to make the text easier to understand.

## **SBOH Delegation Considerations**

This rulemaking delegation request is based on the following criteria established in the State Board of Health's Policy Number 2000-001, Considering Delegation of Rules to Department of Health:

### **The extent to which the proposed rule seeks to adopt federal requirements in which the state has little or no discretion.**

[National Center for Health Statistics \(NCHS\) standards for birth and fetal death statistical items](https://www.cdc.gov/nchs/nvss/deleted_items_from_birth_fetal_death_files.htm)<sup>1</sup> changed significantly in 2014. The department may want to align WAC 246-491-029 with those new standards. Continual realignment with national standards supports interoperability and collection of useful data as those change over time.

### **The extent to which the substance and direction of the proposed rule is expected to have broad public and professional consensus.**

The department does not anticipate any controversy or opposition to the changes considered for WAC 246-491-029. We expect interested parties will suggest language for terms and statistical items to add and remove.

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<sup>1</sup> [https://www.cdc.gov/nchs/nvss/deleted\\_items\\_from\\_birth\\_fetal\\_death\\_files.htm](https://www.cdc.gov/nchs/nvss/deleted_items_from_birth_fetal_death_files.htm)

**The extent to which the proposed rule may make significant changes to a policy or regulatory program.**

Legislative actions between 2018 and 2021 initiated significant changes for CHS. The department intends that any amendment proposal put forward will focus on alignment with current statutory terms and requirements; and NCHS standards. Any changes made to WAC 246-491-029 will support policy and programmatic changes made to other sections of rule related to vital statistics.

**The extent to which the rule revision process would benefit from the Board's role as a convener of interested parties.**

The department does not anticipate any controversy or opposition to the changes considered for WAC 246-491-029. Following the requirements of RCW 34.05.353, we will notify all interested parties by email, provide the proposed rule language to interested parties, and post information about the rulemaking on the department's vital statistics web page.

**Collaboration with the SBOH**

If delegation is granted, the department commits to work closely with State Board of Health's policy staff to make certain that any proposed amendment maintains the integrity of the rule. For more information, please contact Kelly Thomson, DCHS Policy Advisor at (360) 236-2274 or [kelly.thomson@doh.wa.gov](mailto:kelly.thomson@doh.wa.gov).