**STATE OF MAINE**

**GENDER MARKER ON BIRTH RECORD RULE**

**10-146 CODE OF MAINE RULES**

**CHAPTER 16**



Department of Health and Human Services

Maine Center for Disease Control and Prevention

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Augusta, Maine 04333-0011

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**10-146: DEPARTMENT OF HEALTH AND HUMAN SERVICES**

 **OFFICE OF DATA, RESEARCH, AND VITAL STATISTICS**

**Chapter 16: GENDER MARKER ON BIRTH RECORD RULE**

**SUMMARY:**

This rule establishes administrative processes for persons seeking to designate, at the time of birth, a gender marker that is not exclusively male or female, and to issue a new birth record reflecting the appropriate gender marker and name consistent with the individual’s gender identity.

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**SECTION 1. DEFINITIONS**

**A. Definitions.** For purposes of this rule, the following terms shall have the meanings set forth below:

1. **Applicant** means a person seeking the issuance or amendment of a birth record.

2. **Gender marker** means the designation of the registrant’s sex on a birth record, indicated as male, female, undetermined, or X.

3. **X** means a gender marker on a birth record that is not exclusively male or female. X includes nonbinary, intersex and unspecified.

4. **Registrant** means the individual(s) to whom the birth record pertains.

5. **State Registrar** means the State Registrar, Deputy Registrar, or other designee of the State Registrar.

**SECTION 2.** **GENDER MARKERS ON BIRTH RECORDS**

1. **Assigning X at time of birth.** At the time the birth record is created, X may be designated as the gender marker on the birth certificate. Parents listed on the birth certificate must demonstrate mutual consent by signing the birth worksheet, unless the requirement that both parents sign the birth worksheet is waived upon a showing of good cause to the State Registrar in writing. Good cause may be established by demonstrating that the other parent is deceased, cannot be located or has abandoned the child as evidenced by legal documentation showing the applicant has sole parental rights and responsibilities (19-A MRS §1501), or is otherwise unable to provide a signature. If the State Registrar is satisfied that good cause has been shown, then the birth record may reflect X as the gender marker without the absent parent’s signature.
2. **Issuance of new birth record to align gender marker with gender identity.** Requests for a new birth record reflecting the appropriate gender marker must be submitted on forms prescribed by the Department. When the State Registrar grants the request, a new birth record will be established. When a new birth record is established pursuant to this rule, all copies of the original certificate shall be held confidential and only the registrant or the registrant’s legal representative shall have access to the original record, except by court order.
3. Adult or emancipated registrants. Registrants age 18 and older or an emancipated minor may submit an individual notarized attestation on the form prescribed by the State Registrar to request a new birth record reflecting the appropriate gender marker without court order, if the application is for the purpose of affirming gender identity.

2. Registrants under the age of 18. The parent(s) recorded on the birth certificate or the legal guardian(s) must submit a notarized attestation on the form prescribed by the State Registrar to request a new birth record reflecting the appropriate gender marker without court order. The application prescribed by the Department for this request requires the signature of a licensed physician or licensed mental health care provider who, within the scope of their license and through a bona fide patient-provider relationship, affirms that the requested gender marker is consistent with the minor’s gender identity.

a. All parents listed on the birth certificate must consent and sign the application. Both signatures must be notarized. The requirement that both parents sign the application may be waived upon a showing of good cause made to the State Registrar in writing. Good cause may be established by demonstrating that the other parent is deceased, cannot be located or has abandoned the child as evidenced by legal documentation showing the applicant has sole parental rights and responsibilities (19-A MRS §1501), or is otherwise unable to provide a signature. If the State Registrar is satisfied that good cause has been shown, then the new birth record will be issued without the absent parent’s signature.

b. Legal guardian(s) other than parent(s) named on the original birth certificate acting on behalf of the minor must attach a certified court order as proof of legal guardianship to any request pursuant to this section.

**C. Issuance of new birth record to align given names with gender identity.** A registrant who is 18 years of age and older or an emancipated minor, or parent(s) acting on behalf of a minor child, may submit an individual notarized attestation on the form prescribed by the State Registrar to request that a new birth record issued pursuant to Section 2(B) reflect the first name and middle name of the registrant’s or applicant’s choosing, if such a request is made for the purpose of aligning the record with the registrant’s gender identity. When such a request is made, the new birth record issued pursuant to Section 2(B) will reflect the given names requested by the registrant or applicant(s). Alternatively, a name change may be completed in accordance with the Correction and Completion of Vital Records Rule, at 10-146 CMR chapter 2.

**SECTION 3.** **RIGHT TO APPEAL**

1. An applicant whose request to designate X on a birth record at birth, or whose request for a new birth record to be issued under this rule has been denied, has 60 calendar days from the date of receipt of that decision, to request an administrative hearing. The applicant must state the adverse decision in the request for an administrative hearing.
2. The request for an administrative hearing must be in writing and addressed to the State Registrar at the Maine Center for Disease Control and Prevention – Office of Data, Research and Vital Statistics (DRVS). Issues that are not raised by the applicant through this written request for an administrative hearing are waived in subsequent appeal proceedings. The request for administrative hearing may not be amended to add further issues. When the Department receives a timely request for an administrative hearing, the Department will complete the Hearing Report for the Office of Administrative Hearings.
3. The DHHS Office of Administrative Hearings shall notify the applicant and DRVS in writing of the date, time and place of the hearing, and shall designate a presiding officer. Applicants will be given notice of the scheduled hearing date in advance of at least 20 calendar days from the mailing date. The hearing shall be held in conformity with the *Maine Administrative Procedure Act*, 5 MRS Sec. 8001 *et seq*. and the *Administrative Hearings Regulations*, 10-144 CMR Ch. 1.
4. The Department and the applicants may be represented by others, including legal counsel, and may request or subpoena persons to appear at the hearing where they can be expected to present testimony or documents relating to issues at the hearing. The presiding Officer shall issue a written decision and findings of fact to the applicant and provide a copy to the Department.
5. If an applicant is dissatisfied with the decision, an appeal may be taken to the Superior Court, pursuant to the *Maine Rules of Civil Procedure*, Rule 80C and the *Maine Administrative Procedure Act*.

**SECTION 4.**  **VITAL RECORD RULE ADMINISTRATION**

 In the event of conflict between this rule and any other rules administered by DRVS, the terms of this rule supersede other rules and shall apply.

STATUTORY AUTHORITY:

 22 MRS §§ 42 and 2761

EFFECTIVE DATE:

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