



Montana Legislative Services Division
Legal Services Office

MEMORANDUM

TO: Education and Local Government Interim Committee (ELG)
Children and Families, Health & Human Services Interim Committee (CFHHS)

FROM: Lisa Mecklenberg Jackson, Staff Attorney for CFHHS

RE: Proposed DPHHS amendments to Vital Statistics Administrative Rules

DATE: December 6, 2007

BACKGROUND:

On November 8, 2007, the Department of Public Health and Human Services (DPHHS) issued proposed amendments to Montana Administrative Rules pertaining to vital statistics (MAR Notice No. 37-421, <http://www.dphhs.mt.gov/legalresources/ruleproposals/index.shtml>). One proposed amendment to ARM 37.8.116 (Fees for Certification, File Searches, and Other Vital Records Services) was objected to by a number of individuals, including legislators, and organizations. [See attached letters from Montana Association of Counties (MACO) and the Montana Association of County Clerks and Recorders.] Most objectors felt the fee increases contained in the proposed amendments were excessive and should be attempted via a bill during the legislative session, rather than through administrative rule.

DECISION:

At the assigned public hearing for MAR Notice 37-421 on December 3, 2007, the department decided, based on comments received, that more work needs to be done to address possible conflicts in law governing the county and state functions. Accordingly, **the department struck the proposed changes to ARM 37.8.116 and will work with interested parties on an alternate resolution** to clarify and define the applicability of fees and to set the fees for all vital records issuing agencies in the state, specify how the fees will be distributed between the county and the state, and equalize the fees paid by a user, whether the service is provided in a county or state office of vital records.

PROPOSED CHANGE:

Generally, this rule change was meant to clarify and define the applicability of fees and to set the fees for all vital record issuing agencies in the state, specify how the fees would be distributed between the county and the state, and equalize the fees paid by a user, whether the service is provided by the county or the state. Specifically...

ARM 37.8.116 FEES FOR CERTIFICATION, FILE SEARCHES, AND OTHER VITAL RECORDS SERVICES (1) Fees in this rule apply to the department, the county clerk and recorders, or any vital record issuance agency. County clerk and recorders will retain for use in their respective counties any amount specified in 7-4-2631, MCA or this rule. The difference between the fees collected by the county clerk and recorder, and the amount specified by the department, must be forwarded to the department and be deposited as specified in 50-15-111, MCA.

(†) (2) The fee for a search and issuance of a certified copy (photocopy or computer-produced)

of a birth certificate, a death certificate, a fetal death certificate, a certificate of birth resulting in a stillbirth, an acknowledgment of paternity, or a delayed birth registration is \$12 \$10 for the first copy of a specific request and \$5 for each additional copy of the same record requested at the same time as the first copy.

(3) The fee for a search and issuance of a noncertified informational copy of a birth certificate, death certificate, fetal death certificate, certificate of birth resulting in a still birth, acknowledgment of paternity, delayed birth registration, or documentary evidence used to amend a vital record is \$8. Counties shall forward \$1 of each \$8 fee to the department.

(4) The fee for a certified copy of documentary evidence used to amend a vital record, an acknowledgement of paternity, or any other vital record document is \$8.

~~(2) (5) The department shall charge a fee for nonincidental documents or a paper search of files or records that have been filed within a period of five years or less without copying, is of \$10 \$5 per name for a record search within any period of five years or less. If the record is not located, the fee will not be refunded. If the request is for documents filed more than five years previous, an additional fee of \$1 per year over the first five years will be charged. Counties must forward \$1 of each records search fee to the department.~~

(3) through (5) remain the same but are renumbered (6) through (8).

~~(6) (9) The fee for filing a delayed registration of a vital record is \$25. A certified copy of the delayed certificate will be provided to the person filing the delayed registration.~~

~~(7) (10) The fee for amending or correcting a vital record after one year from the date of filing is \$15. If a court orders the creation of a replacement record, the fee is \$25. A certified copy of the amended record will be provided to the person requesting the amendment or correction.~~

(11) The fee for creating a replacement birth certificate after a legitimation, paternity determination, acknowledgement of paternity, or court order establishing paternity is \$25. A certified copy of the record will be provided.

~~(8) (12) The fee for a search of the putative father registry is \$10 \$15 per name.~~

(9) remains the same but is renumbered (13).

~~(10) (14) The fee for producing aggregate statistics is \$25 \$35 per hour for programming and processing if that processing takes more than half an hour's work on existing programs.~~

~~(11) (15) The fee for a disinterment permit is \$5 \$10. The local registrar shall collect the fee, \$2 of which must be remitted and forward \$5 of the fee to the department.~~

(16) Unless negotiated by contract, the fee for the verification of a vital event by a non-Montana government agency, subdivision of a non-Montana government agency, or contractor for a government agency will be \$8 per request.

~~(12) (17) Overpayment of a required fee received in the Office of Vital Statistics by the department will be refunded if in excess of \$5, and any Any overpayment of less than \$5 will be refunded; if the applicant requests it the refund in writing within one year after the payment to the department.~~

(18) If a record has been located but the criteria of ARM 37.8.126 and 37.8.127 are not met, the request is cancelled and no refund will be issued. Fees will be retained for the cost of the record search.

AUTH: 50-15-102, 50-15-103, 50-15-111, MCA

IMP: 42-2-218, 50-15-111, MCA

Department'S RATIONALE FOR AMENDMENT (provided in MAR 37-421):

MAR Notice No. 37-421

ARM 37.8.116. This rule contains fee changes that are applicable to the department and local registrars. Section 50-15-111(1), MCA, directs the department to set fees by rule for:

- (a) certified copy of certificates or records;
- (b) searches of files or records when a copy is not made;
- (c) copies of information provided for statistical or administrative purposes as allowed by law;
- (d) the replacement of a birth certificate subsequent to adoption, legitimation, paternity determination or acknowledgement, or court order.
- (e) filing a delayed registration of a vital event;
- (f) amending a vital record, after one year from the date of filing; and
- (g) other services specified in statute or by rule.

In ARM 37.8.116(1), the department clarifies that the ensuing fees in the rule apply to all vital record issuing agencies in the state. The section also specifies how the fees must be distributed between the counties and the state.

By amending section (1), the department intends to have uniform fees between the counties and the department. Currently, the state has two disparate fee structures that are vastly different. For instance, 7-4-2631, MCA, specifies the portion of the fees that counties may retain for their own use. The law specifies that counties will charge \$5 for a certified copy of a birth certificate, and \$3 for a certified copy of a death certificate. Counties are to send the difference between its fee and the state's fee to the department for deposit in a special revenue account for the maintenance, preservation, and administration of the statewide vital statistics system. Over the years, however, the department has had to increase its fees in ARM 37.8.116 to cover all of the costs for the maintenance and administration of the vital statistics system. Besides maintaining its own system, the department provides to the counties application forms and security paper for certificates, maintenance for the state-wide electronic data system, and training. As a result, disparities between the department and county fees currently exist. For instance, the current fees are \$12 for a state-issued birth certificate compared to \$5 for a county-issued one, and \$12 for a state-issued death certificate versus \$3 for a county-issued one. The department believes the proposed fee structure specified in section (1) will establish fee parity and provide funding for the vital record system that is used by the department and counties.

Section (2) of ARM 37.8.116 contains a reduction in fees, from \$12 to \$10, for certified copies of certificates.

Section (3) specifies the fee for an informational copy of a record regardless of the search circumstance. This fee is being reduced from \$10 to \$8 per copy.

Section (4) is added to set the fee for obtaining certified copies of documentary evidence.

Section (5) sets the fee for record searches when a copy of the record is not made. The search fee is being reduced from \$10 to \$5.

In section (9), the fee for filing a delayed registration remains the same at \$25.

Sections (10) and (11) have been altered to reflect the requirements in 50-15-111, MCA. That statute requires the department to prescribe fees by rule for the issuance of a replacement birth certificate subsequent to adoption, legitimation, and paternity determination, acknowledgement, or court order. The fees of \$15 and \$25 are based on the difference in the

amount of work needed for amending records as opposed to creating replacements. Amending existing records entails less work in that the original record remains intact, the old information is struck, and new or corrected information is added. To substitute a record, any retained information is entered on a new record, and all original documents are recalled, placed in a sealed file, and stored indefinitely. The fees specified in sections (10) and (11) are commensurate with the amount of work required.

Sections (12) and (14) include raising the fee to conduct a search of the putative father registry and for the programming needed to produce aggregate statistics. The fee increases of \$5 for putative father searches and \$10 for compiling statistics are needed to cover the growing costs for processing and programming.

Section (15) contains a \$5 addition to the fee for disinterment permits. The fee has not been changed since 1981 even though administrative and accounting expenses incurred in providing the service have increased through the years. The increased fee enables the office to recover the costs of providing the permits.

Section (16) applies to non-Montana governmental and out-of-state agencies that require verification of the information on a certificate. Federal agencies, as well as private entities such as insurance companies and hospitals that want to purge their old files submit lists of birth and death certificates to the department and ask for verification of the information. Because no specific fee currently exists for this service, the entities and agencies have been charged \$10 per verification, the same cost for a noncertified copy of a certificate. Section (6) designates a specific fee for vital record verification, listed as \$8. The fee is less than \$10 because copies of certificates are not requested.

The department does not charge intrastate agencies for verification information because to do so would be like billing itself. Transferring funds between the agencies entails journal entries, increased time, and increased costs to the agencies.

Section (18) allows the department to retain, not refund, fees for providing services to noncomplying requests for information and copies. On average, there are between 75 and 100 issuance requests per year that do not meet the minimum application requirements. Currently, requesters that do not meet these requirements can request a refund after the department staff have searched for the requested record and spent time and resources contacting the requesters for additional information or documentation. After the department's work, the requestor may cancel the request or not follow through and provide what is necessary.

Retention of the fees for noncomplying requests is needed to cover the department and counties' expenses. If retention of the fees is allowed, requesters will receive prior notice on the initial applications about the fees being nonrefundable and retained for administrative costs.

Additional changes to ARM 37.8.116 clarify the applicability of the various existing fees and rules. The fees remain the same and should have no additional fiscal impact.

The changes to ARM 37.8.116 are necessary because the department provides and covers all costs for the administration of Montana's vital records system, including:

- purchasing security paper and distributing it to the counties;
- developing, printing, and distributing vital record forms;
- developing, implementing, and maintaining electronic data acquisition and issuance systems; and
- training for the use of the system.

Because of the current fee structure, only those persons requesting copies or services from the department pay for the operating and administrative costs associated with the statewide system. The intent of the proposed fee structure is to have a uniform statewide system where the costs are shared between the state and counties.

EXPLANATION:

Administrative rule review for DPHHS is performed by the staff attorney for the CFHHS Interim Committee. At CFHHS' meeting on November 16, 2007, MAR Notice No. 37-421 was included in staff's rule review. It was staff's opinion that the department included an acceptable statement of rationale for the rule change, as well as has the necessary implementing authority under MCA 50-15-111 which allows the department to set fees, by rule, for copies of certificates and records, as well as file or record services. However, prior to the November 16 CFHHS meeting, it was brought to staff's attention by DPHHS staff that they had received several calls from individuals who were unhappy with the amount of fee increases proposed by the department. At its public hearing for these proposed amendments on December 3, 2007, several individuals including Senator Frank Smith and a Sheryl Wood, associate director of Montana Association of Counties (MACO), testified against the proposed fee increases, stating that the increases were too great and would necessitate increased work on the part of the counties for the monetary benefit of the state. They also listed a number of other individuals and organizations that had contacted them and were opposed to the rule change. Based on this testimony and other testimony received in the form of approximately 20 letters, e-mails, and phone calls, the department determined that more work needs to be done to address possible conflicts in law governing the county and state functions. Consequently, the department struck the proposed changes to ARM 37.8.116 and will work with interested parties on an alternative resolution to clarify and define the applicability of fees and to set the fees for all vital records issuing agencies in the state, specify how the fees will be distributed between the county and the state, and equalize the fees paid by a user, whether the service is provided in a county or state office of vital records. The department issued a notice to this effect on December 3, 2007, <http://www.dphhs.mt.gov/legalresources/ruleproposals/index.shtml>.

According to Laurie Lamson, Administrator, Business and Financial Services at DPHHS, potential interested parties who may work on an alternative resolution for fee filing services include MACO, the Montana Association of Clerk and Recorders, possibly the Funeral Directors Association, and legislative committee members. Lamson clarified the department's position: "We [the department] have always worked very closely with the County Clerk and Recorders, and consider them our partners in providing vital certificates and related services to Montanans. Our concern is that we're not fulfilling our responsibilities under 50-15-111, MCA, which requires us to set fees by rule for the "statewide system of vital statistics for gathering, recording, using, amending, and preserving vital statistics and records." Section 7-4-2631, MCA sets the fees the counties are to charge "for the use of their respective counties." The department's legal interpretation [and that of CFHHS' staff attorney] was that this charge was the amount the counties were to retain, but that there could be an additional amount charged by the counties to support the state vital records services to counties and end users. In addition, the fees for some services, such as record searches, vary significantly from county to county, and do not meet the requirements of 50-15-111, MCA, which requires the department to set "a fee" for the services

listed. The counties have a different interpretation of their requirements and limitations in regard to setting fees for services."

Questions regarding the department's decision to strike the proposed rule may be addressed to James Edgar, State Registrar, Office of Vital Statistics, PO Box 4210, Helena, MT 59604, 444-4250, jaedgar@mt.gov.

CONCLUSION:

It is expected that the group working on an alternative resolution to the proposed vital records fee increase contained in the stricken amendments to ARM 37.8.116 will aim to develop a bill that is revenue neutral, with adequate compensation for county clerks for their work in the issuance of vital statistic records, while providing the department adequate funding to maintain the vital statistics program and provide fee equity both at the local and state levels, with minimal impact to the constituency. At this time, it is uncertain which of the two interim committees, CFHHS or ELG, will follow up on this issue but committee staff will keep members apprised accordingly.

CI0425 7346ljxa.