

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM: 2014

Bill Number: S.28 Name of Bill: An act relating to gender-neutral nomenclature for the identification of parents on birth certificates

Agency/ Dept: AHS/VDH Author of Bill Review: Harry Chen

Date of Bill Review: 1/27/2014

Status of Bill: (check one):

☒ Upon Introduction ☐ As passed by 1st body ☐ As passed by both bodies

Recommended Position:

☐ Support ☐ Oppose ☐ Remain Neutral ☒ Support with modifications identified in #8 below

Analysis of Bill

1. Summary of bill and issue it addresses. *Describe what the bill is intended to accomplish and why.*

The bill would make the following changes to Vermont birth certificates:

- a) Change the requirement that physicians and midwives file a birth certificate within **five (5) days of the birth**. (The statute currently allows ten (10) days.)
- b) Require the Health Department to provide a form that indicates **the parent may choose to be identified with gender-neutral nomenclature** on the birth certificate. When a birth certificate is issued, the parent(s) will be identified as indicated on the form.
- c) The name of a parent **other than the birth mother** shall be included on the birth certificate of unmarried parents and if the other parent has signed a voluntary acknowledgement of parentage. (The statute currently only allows the father this option.)

There is an inconsistency in the stated purpose of the bill and the proposed language (see below for description).

2. Is there a need for this bill? *Please explain why or why not.*

For some parts, yes, but for other parts, no. The following explains our response based on each change:

a) Change the requirement that physicians and midwives file a birth certificate within five (5) days of the birth. (The statute currently allows ten (10) days.)

YES. This would be an appropriate change to current statute. There are situations in which we receive birth certificates very late from physicians and midwives. This might help speed the process. We occasionally receive complaints from parents when the physician or midwife has not reported the birth in a timely manner. However, changing the statute to five days is unlikely to have any impact unless a penalty for noncompliance is added to the law. Current penalties are so minor that parties are not concerned by enforcement.

b) Require the Health Department to provide a form that indicates the parent may choose to be identified with gender-neutral nomenclature on the birth certificate. When a birth certificate is issued, the parent(s) will be identified as indicated on the form.

NO. This is not necessary because the Department changed the birth certificate format to a gender-neutral nomenclature ("Parent" labels) in 2013. All birth certificates are now issued as gender-neutral, therefore this change is not necessary. However, there is also a problem with the proposed language.

The statement of purpose for the bill and the content are contradictory. The statement of purpose for the bill reads:

"This bill proposes to require the use of gender-neutral nomenclature for the identification of parents on a birth certificate."

If that's the case, then it matches current practices. However, (b) (2) reads,

"....shall provide the option for a parent or parents to be identified with gender-neutral nomenclature."

If that's the case, then we will have to provide options to both parents, which at a minimum could result in the following four combinations: Mother/Father, Mother/Parent, Parent/Father or Parent/Parent. This would require major IT work to create multiple layouts of birth certificates and very significant changes to the Electronic Birth Registration System (EBRS) software. (As to the term "major" and "significant," it means it would require several months of work.)

Additionally, it would mean that the OBNet software used by Fletcher Allen Health Care and five other Vermont hospitals would need to be modified. These hospitals use OBNet to create and print the birth certificates (instead of EBRS). They, too, would need to create and test changes to their software to create multiple different formats of birth certificates. In the past, it has required upwards of 12 months for FAHC to make changes to OBNet. Therefore, this would require hospitals

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to make significant programming changes to their software and incur significant expenses at a time when they are struggling to deal with Meaningful Use requirements from CMS, ICD-10 coding changes to all hospital systems, and other state/federal requirements. It would be a huge, unnecessary burden.

Setting aside the technical challenges in creating and providing multiple formats, there are other potential problems:

- Significant potential for user error since the parties creating the birth certificates would have to choose from multiple options and could issue the wrong format. In turn, this would then require corrections and reissuance.
- Law enforcement would not be supportive of multiple formats because it makes it much more difficult for them to identify when a certificate may be fraudulent. Law enforcement needs – especially federal agencies, such as Passport Office, Social Security Administration, Department of Defense, etc. – there to be one consistent format/standard from each state.

We strongly believe that the current process, which is one format that only uses “Parent” as the title, is a reasonable and efficient standard rather than make multiple options possible. Additionally, the Department has not received any complaints from any families since the change to “Parent” for all birth certificates was implemented on February 1st, 2013. There have been zero (0) requests for “Parent” to be changed back to “Mother” or “Father.” Based on this experience, there does not appear to be any concerns by the public that anything other than “Parent” should be available.

- c) **The name of a parent other than the birth mother shall be included on the birth certificate of unmarried parents and if the other parent has signed a voluntary acknowledgement of parentage. (The statute currently only allows the father this option.)**

Neutral. The purpose appears to be to create a process that allows unmarried female, same-sex couples to get the other partner’s name on the birth certificate without going through an adoption process. It is unclear to us how helpful this may be. It may create confusion since the signors of the Voluntary Acknowledgement of Parentage are acknowledging that they are the **biological** parents. Obviously, the VAP form would need to be significantly revised with the Office of Child Support. (Also, it is unclear to us whether this would require changes to statutes outside of Health, such as the parentage and adoption sections.)

Since it is unclear to us the full effects of this change, and whether it conflicts with other statutes regarding parentage and adoption, we are “neutral.” If changes need to be made to the VAP form, we would work with the Office of Child Support and update the hospitals regarding the procedures.

3. What are likely to be the fiscal and programmatic implications of this bill for this Department?

The implications are different, depending on the section, as follows:

- a) Change the requirement that physicians and midwives file a birth certificate within five (5) days of the birth. (The statute currently allows ten (10) days.)**

Little to no impact to staff or resources. This could be accommodated.

- b) Require the Health Department to provide a form that indicates the parent may choose to be identified with gender-neutral nomenclature on the birth certificate. When a birth certificate is issued, the parent(s) will be identified as indicated on the form.**

If the change requires all birth certificates to be gender-neutral, then there is no impact since we have already implemented such a change exactly one year ago. However, if the change requires us to offer multiple options and create multiple formats, then it will be a **major impact to staff and resources for the Department**.

The work required by Vital Records and IT staff would be very significant, requiring many months of work and redirection from other required projects. The salary expenses, based on the potential staff time, could easily reach \$50,000 - \$100,000 (just for the Department).

- c) The name of a parent other than the birth mother shall be included on the birth certificate of unmarried parents and if the other parent has signed a voluntary acknowledgement of parentage. (The statute currently only allows the father this option.)**

Very minor impact to staff and resources. This could be accommodated.

4. What might be the fiscal and programmatic implications of this bill for other departments in state government, and what is likely to be their perspective on it?

- a) Change the requirement that physicians and midwives file a birth certificate within five (5) days of the birth. (The statute currently allows ten (10) days.)**

Little to no impact to staff or resources. This could be accommodated.

- b) Require the Health Department to provide a form that indicates the parent may choose to be identified with gender-neutral nomenclature on the birth certificate. When a birth certificate is issued, the parent(s) will be identified as indicated on the form.**

There might be an impact to the Agency of Human Services or DII based on the extensive IT work that would be necessary.

- c) The name of a parent other than the birth mother shall be included on the birth certificate of unmarried parents and if the other parent has signed a voluntary acknowledgement of parentage. (The statute currently only allows the father this option.)**

There may be a minor impact to the Office of Child Support since the VAP form would need to be updated and reviewed by legal counsel. Also, the educational materials that the Office of Child Support distributes to hospitals and parents would likely need to be changed, thereby incurring staff time and printing expenses.

5. What might be the fiscal and programmatic implications of this bill for others, and what is likely to be their perspective on it? (for example, public, municipalities, organizations, business, regulated entities, etc)

a) Change the requirement that physicians and midwives file a birth certificate within five (5) days of the birth. (The statute currently allows ten (10) days.)

Physicians, hospitals and midwives are likely to complain about the requirement, stating that they are too busy to file the birth certificate in less than a week. The hospital association and medical society might have concerns, too, since it creates a tougher mandate. However, since the current penalties for noncompliance are negligible, such entities could simply ignore the law change.

Town clerks will likely support the change since it will assist them in providing quicker support to parents.

b) Require the Health Department to provide a form that indicates the parent may choose to be identified with gender-neutral nomenclature on the birth certificate. When a birth certificate is issued, the parent(s) will be identified as indicated on the form.

The hospitals and hospital association will definitely oppose the change if it requires the modification of OBNet to create multiple formats for multiple scenarios. The new "Parent" format was implemented on February 1st, 2013, which required a lot of time and resources. There haven't been any complaints in the twelve months since implementation. The hospitals and hospital association would therefore be likely to oppose a change, seeing it as unnecessary and extremely costly. Based on our past work with the hospitals on making modifications to OBNet, we believe the creation, testing and implementation of multiple formats in OBNet would require six to twelve months, and tens of thousands of dollars. Additionally, it would redirect their IT resources away from other state and federally-mandated projects.

c) The name of a parent other than the birth mother shall be included on the birth certificate of unmarried parents and if the other parent has signed a voluntary acknowledgement of parentage. (The statute currently only allows the father this option.)

The Office of Child Support is very likely to have an opinion on this subject. However, we do not know what position they would take or the full impact to their programs.

6. Other Stakeholders:

6.1 Who else is likely to support the proposal and why?

The CDC would support the change to five (5) days reporting. They have been promoting a change to five days in order that states could provide birth medical data quicker.

6.2 Who else is likely to oppose the proposal and why?

As mentioned earlier, federal agencies and law enforcement would oppose a change that requires multiple formats of the birth certificate for multiple scenarios.

7. Rationale for recommendation: *Justify recommendation stated above.*

- A) We support the change to five (5) days for birth certificates.
- B) We strongly oppose the change if it requires us to create multiple formats of the birth certificate, especially after implementing a gender-neutral format one year ago without any complaints from the public.
- C) We are neutral on the change to adding unmarried, same-sex partners as a parent to the birth certificate via the use of a VAP form.

8. Specific modifications that would be needed to recommend support of this bill: *Not meant to rewrite bill, but rather, an opportunity to identify simple modifications that would change recommended position.*

We recommend the following changes:

- (b)(1) needs to be modified to read as, “...on or before 5 days after the birth of the child.”

It currently reads as, “10 days” which makes it inconsistent with (a) that reads as 5 days.

- The section that reads as, “...shall provide the option for a parent or parents to be identified with gender-neutral nomenclature” should be removed. The word “option” means we and the hospitals would need to undertake the extensive and unnecessary IT work described above.
- Add stronger enforcement penalties for non-compliance with the 5 days. The current statutes do not contain penalties that would encourage any meaningful change by physicians and midwives.

Secretary/Commissioner has reviewed this document: _____ **Date:** _____