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**TESTIMONY ON DEPARTMENT OF HEALTH PROPOSED AMENDMENTS TO
RULES AND REGULATIONS GOVERNING VITAL RECORDS [R23-3-VR]
October 7, 2014**

The ACLU of Rhode Island appreciates the opportunity to testify on these proposed amendments to the Department's regulations governing vital records. Our comments will largely focus on Section 35.5, which addresses the issue of revising the gender designation on an individual's birth certificate.

Beyond the intrinsic value of having a birth certificate that corresponds to their identity, transgender people may have a strong need to change the gender marker on their birth certificate for many critical reasons related to employment, schooling, as well as social recognition of their gender.

However, it is our understanding that the Department's current policy essentially requires gender reassignment surgery in order to change the gender designation on a birth certificate. The ACLU applauds the Department for deciding to review and revise this very restrictive policy.

The current medical consensus is clear that while surgery is medically necessary for some, it is not appropriate or necessary for all transgender people, and such a requirement therefore results in an unreasonable burden on members of the transgender community. Across the country, agencies have responded to that recognition with more inclusive policies.

In 2010, for example, the U.S. Department of State revised its policy to recognize that gender transitions did not require surgery. In addition to the Department of State, the Social Security Administration and the states of Oregon, Washington, Vermont and California as well as the District of Columbia have adopted comparable standards to ensure that transgender individuals can obtain accurate identification without proof of surgery. This approach makes clear that the state should not be substituting its judgment over that of licensed health care professionals.

In that respect we particularly support the proposed regulations for:

- Allowing the issuance of a new birth certificate with the appropriate gender designation **without** indicating that the birth certificate has been changed. This revision is extremely important in order to protect the privacy of transgender and intersex people; and

- Allowing a gender marker change based on certification that the individual has undergone surgical and/or hormone treatment **and/or** “other treatment appropriate for the individual.” This revision is significant because it recognizes the range of appropriate treatment that is available and does not unnecessarily limit the types of treatment that are deemed sufficient; and
- Allowing medical providers outside Rhode Island to provide the certification. Many transgender people in RI may have received care out of state (such as in MA), and it is therefore important that they be able to change their gender marker without having to return to RI and receive medical care by a RI licensed provider.

Having said that, we wish to suggest one technical correction to the proposal. We also encourage the Department to consider two other amendments the next time that the agency looks at revising the regulations. We are not requesting that they be revised as a result of this hearing.

Our technical recommendation concerns Footnote 4. It refers to version 7 of the WPATH standards of care. In order to prevent the regulations from becoming routinely outdated, and requiring technical updating every time those standards are revised, we suggest a technical amendment to the footnote to instead reference “the latest version” of the WPATH standards, or including similar language along those lines.

More substantively we encourage the Department to consider the following two amendments at a future hearing:

1. The proposal unduly limits the medical providers authorized to provide certification for a gender marker change. We believe it fails to take into account other qualified medical professionals, including mental health professionals, who regularly provide treatment for transgender individuals. In fact, the regulations appropriately cite the World Professional Organization for Transgender Health (WPATH) standards as the guidepost for a certification, and those standards contemplate initial care being done by a mental health professional, with referrals to other kinds of medical specialists only where appropriate. Even more to the point, those standards note that mental health professionals might be called upon to provide documentation in support of ID document changes including birth certificates. *See Standards of Care*, at 32. We encourage the Department to acknowledge that by including them in these regulations as individuals qualified to provide a gender correction certification for birth certificate purposes.

2. Section 35.5(e)(1) requires an affidavit from the individual seeking to have his or her gender identity corrected on the birth certificate, but the regulation does not specify what that affidavit must state. To avoid any confusion or disputes, we would urge that the regulation specify that the affidavit need only confirm the person’s identity and request for a gender marker change.

Rhode Island has been a leader in protecting transgender rights. It was one of the first states to ban discrimination on the basis of gender identity or expression. Yet we know that transgender individuals continue to face severe and blatant discrimination. It is critical that they be able to obtain, and obtain without unnecessary obstacles, essential documentation from the state to accurately reflect their identity. The ACLU believes these proposed regulations, in jettisoning the state's current restrictive standards for gender changes on birth certificates, are a major step forward. Adoption of these regulations would go a long way to further Rhode Island's public policy in favor of dignity and individual rights.

If the suggestions we have made are not adopted, we request that, pursuant to R.I.G.L. §42-35-3(a)(2), you provide us with a statement of the principal reasons for and against adoption of these rules, incorporating therein your reasons for overruling the suggestions urged by us. Thank you for your time and attention to our comments.

Submitted by:
Steven Brown, Executive Director