

## **Motor Vehicle Division Policy Memo # 21-04**

### ***Approval of Change of Sex Designation Affidavits for Customers Born Outside Iowa***

**DATE:** May 24, 2021

**FROM:** Sara Siedsma, Compliance Officer, Motor Vehicle Division

**TO:** All Motor Vehicle Division staff, Iowa County Treasurers and County Treasurer staff that issue driver's licenses and nonoperator's identification cards

#### **SUBJECT**

This policy memo explains our updated policy for review and approval of change of sex designation affidavits submitted by customers born outside of Iowa who are seeking to change sex designation listed on their driver's license or non-operator's identification card. This memo is most applicable to MVD staff and treasurers that issue driver's license and non-operator's identification cards.

#### **SUMMARY**

In 2017, we updated administrative rule 761 IAC 601.5(7) to allow a customer born outside of Iowa to submit a notarized affidavit from a licensed physician confirming a change in the customer's sex designation. This notarized affidavit is identical to what an Iowa born applicant must present to the Iowa Department of Public Health in order to obtain an amended or new Iowa birth certificate documenting a change in sex designation.

When the rule was originally implemented, the change of sex designation affidavit was required to be reviewed and approved by certain MVD central office staff (Sara Siedsma or Kathleen Meradith-Eyers) prior to allowing the customer to be issued a credential with a new sex designation.

***However, this review and approval policy is now being updated to allow a driver's license service center supervisor or a member of the MVD central office Advanced Customer Experience (ACE) team to review and approve a change of sex designation affidavit for a customer born outside Iowa.***

#### **EFFECTIVE DATE**

This policy change is effective on the date this memo issued, as listed above.

#### **LINK TO ADMINISTRATIVE RULE**

<https://www.legis.iowa.gov/docs/iac/rule/11-08-2017.761.601.5.pdf> which is also attached to the end of this memo.

#### **QUESTIONS AND ANSWERS**

The following questions and answers will provide additional clarification for staff and customers.

##### **WHAT REQUIREMENTS MUST THE NOTARIZED AFFIDAVIT MEET TO BE ACCEPTED FOR CHANGE OF SEX DESIGNATION?**

Administrative rule 761 IAC 601.5(7)(b)(1)(4) requires the affidavit to meet all of the following requirements:

- 1) The affidavit must be completed by a medical doctor (MD) or an osteopathic doctor (DO).
- 2) The affidavit must contain the doctor's full name, address, state of medical license, and medical license number.
- 3) The affidavit must contain the signature of the doctor and must be notarized (i.e., contain the signature and stamp of a notary public).
- 4) The affidavit must describe the sex designation treatments provided to the customer.
- 5) The affidavit must contain a statement that as a result of the treatment, the customer's sex designation was permanently changed.

**CAN THE CHANGE OF SEX DESIGNATION AFFIDAVIT BE COMPLETED AND SIGNED BY A NURSE, PHYSICIAN'S ASSISTANT, OR MEDICAL PROFESSIONAL OTHER THAN AN MD OR DO?**

No, the administrative rule requires that the doctor completing the affidavit must be a physician and surgeon or osteopathic physician and surgeon, which is an MD or DO. This is the same standard for a customer born in Iowa who is seeking to change the sex designation on their birth certificate with the Iowa Department of Public Health.

**WHAT DOES IT MEAN WHEN THE RULES SAYS THE AFFIDAVIT MUST CONTAIN A DESCRIPTION OF THE SEX DESIGNATION TREATMENT?**

Requiring a description of the sex designation treatment is equal to what is required when an Iowa born customer is seeking to change the sex designation on their birth certificate with the Iowa Department of Public Health. A description of the treatment can vary from doctor to doctor and patient to patient, but generally we have seen treatment descriptions include the following: mental health counseling; hormone therapy or medications; surgery; reduction, enlargement, or reconstruction of the breasts or genitalia; and changes to other physical features, such as reduction of the Adam's apple or changes in body hair patterns more consistent with the opposite sex.

As an example, the language in italics below is a treatment description from a notarized affidavit that was accepted for a change of sex designation:

*These treatments and medical procedures included, but were not limited to, referral and/or coordination of mental health counseling session(s), treatment with estrogen and treatment with androgen blocking medications. The treatments irreversibly altered [the customer's] body in the following manner, development of breast tissue.*

Please note, not all notarized statements will follow this example completely, and that is ok as long as the notarized statement contains all of the required elements under the administrative rule as outlined above.

We should read any description of the sex designation treatment in the customer's favor and not be overly strict about the content of the description. Keep in mind, we are relying on the doctor's professional opinion that the customer's sex designation was changed, so we should generally accept any description of treatment provided by the doctor. However, if there are questions about whether a treatment description meets the requirements under the rule,

please reach out to Sara Siedsma and Kathleen Meradith-Eyers in MVD central office and they will conduct a further review.

**WHAT IF THE SEX DESIGNATION TREATMENT DOES NOT INCLUDE SURGERY?**

According to the notarized affidavits we have received from doctors specializing in this type of care, surgery is not always required or advisable to complete a change of sex designation for a customer. As stated above, we need to be relying on the doctor's professional expertise in describing the treatment that completed the sex designation change, and if the treatment description does not include surgery, that does not prevent us from accepting the affidavit to prove a change of sex designation.

**WHAT IF THE AFFIDAVIT IS SIGNED AND SWORN BY THE DOCTOR UNDER PENALTY OF PERJURY BUT IS NOT NOTARIZED?**

Unfortunately, the administrative rule specifically requires the affidavit to be notarized, which means the doctor's signature must be witnessed by a notary public and the notary public's signature and stamp must be included on the affidavit. This is the same requirement for a customer born in Iowa seeking a change of sex designation on their birth certificate from the Iowa Department of Public Health.

Most Iowa providers are aware of this requirement, but occasionally we will see an affidavit from an out of state provider that is simply signed by the doctor under penalty of perjury but is not notarized. If you receive an affidavit that is not notarized, it cannot be accepted and you should explain to the customer that the rule requires the affidavit to be notarized.

**CAN WE ACCEPT A CHANGE OF SEX DESIGNATION AFFIDAVIT FOR A CUSTOMER BORN IN IOWA?**

No, the administrative rule requires a customer born in Iowa to obtain a new or amended birth certificate from the Iowa Department of Public Health before we will change the customer's sex designation on their driver's license or identification card. The reason the administrative rules allow us to accept a change of sex designation affidavit for customers born outside of Iowa is because not every state provides a mechanism for a person to change their sex designation on their birth certificate.

**WHAT SHOULD I DO IF A CUSTOMER PRESENTS AN AFFIDAVIT THAT DOES NOT MEET THE CRITERIA UNDER THE ADMINISTRATIVE RULES?**

Although most providers specializing in this type of care are aware of the requirements necessary for a change of sex designation affidavit, there are times when a required element is missing from the affidavit. This can be especially true if the provider is from outside of Iowa, and who may be used to the requirements in their own state.

When an affidavit is missing a required element, we are not allowed to accept the affidavit to prove a change of sex designation. However, you should explain to the customer what is missing from the affidavit and may also want to provide them with a copy of administrative rule

761—601.5(7), attached to the end of this memo, which lists out all of the requirements for a change of sex designation affidavits. We have learned from past experience that most doctors are very willing to complete a new change of sex designation affidavit containing all of the required elements once they understand what elements are required under Iowa law.

**CAN A PERSON BORN OUTSIDE IOWA CHANGE THE SEX DESIGNATION ON THEIR IOWA CREDENTIAL OTHER THAN BY SUBMITTING A CHANGE OF SEX DESIGNATION AFFIDAVIT?**

Yes. The administrative rule also allows a person born outside of Iowa to submit a new or amended identity document confirming their change of sex designation. However, as noted above, not all jurisdictions have a mechanism in place to allow a person to change the sex designation on their birth certificate or other identity document. So, the change of sex designation affidavit is an option for any customer born outside of Iowa, but is not the only document we will accept to prove a sex designation change for a customer born outside Iowa.

**CAN A PERSON'S SEX DESIGNATION BE LISTED AS SOMETHING OTHER THAN MALE OR FEMALE ON THEIR IOWA DRIVER'S LICENSE OR IDENTIFICATION CARD?**

No, at this time, Iowa law only allows us to list the customer's sex designation on their credential as male or female. We are aware that other states do allow a gender X to be listed on their driver's licenses and identification cards, but at this point, Iowa law does not allow gender X.

Iowa Administrative Rule 761—601.5(7)

**601.5(7) Verification of change of sex designation.** The sex designation listed on the driver's license or nonoperator's identification card that is issued shall be identical to the sex designation listed on the identity document submitted unless the applicant does one of the following:

*a. Applicants born in Iowa.* An applicant born in Iowa must submit a certified amended or new Iowa birth certificate that documents the change of sex designation and that meets the requirements of paragraph 601.5(1)“b.”

*b. Applicants born outside of Iowa.*

(1) An applicant born outside of Iowa may document the change of sex designation by any of the following methods:

1. Submit a certified amended or new birth certificate from a state other than Iowa that documents the change of sex designation and that meets the requirements of paragraph 601.5(1)“b.”

2. Submit an amended or new Consular Report of Birth Abroad that documents the change of sex designation and meets the requirements of paragraph 601.5(1)“c.”

3. Submit an amended or new Certificate of Citizenship that documents the change of sex designation and meets the requirements of paragraph 601.5(1)“h.”

4. Submit a notarized affidavit from a physician and surgeon or osteopathic physician and surgeon that documents all of the following:

- The physician and surgeon or osteopathic physician and surgeon completed sex designation treatment for the applicant.

- A description of the medical procedures that constituted the treatment.

- As a result of the treatment, the applicant's sex designation was permanently changed by surgery or other treatment.

- The physician and surgeon or osteopathic physician and surgeon's full name, address, state of medical license, and medical license number.

(2) Pursuant to Iowa Code section 321.13, the department may make further investigation or require further information necessary to determine whether a change of sex designation occurred.

*c. Documentation.* Documentation provided under this subrule shall be submitted to Driver and Identification Services, Iowa Department of Transportation, P.O. Box 9204, Des Moines, Iowa, 50306-9204.

*d. Name change.* A change of sex designation shall not effect a name change unless the applicant verifies a name change pursuant to subrule 601.5(5).