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Members of the Working Group to Revise the Model State Vital Statistics Act,

The Association of Professional Genealogists (APG) submits the following comments in opposition to the access restrictions to vital records that have been proposed in the 2023 revision to the Model Vital Records Act (hereinafter, Model Act) as well as earlier versions of the same.

APG is a not-for-profit 501(c)(6) professional organization dedicated to the growth and enhancement of the genealogical profession. Founded in 1979, APG is the world's largest association for professional genealogists, representing more than 2,000 members in forty countries around the world, all of whom are committed to the preservation and dissemination of historical records. Genealogists rely on public records to trace family histories and understand the social, economic, and political contexts in which our research subjects lived.

For decades, the push to restrict access to birth, marriage, and death records has been addressed in the Model Act. Section 26 of the current Model Act states these records will only transfer to archives on the following schedule: births after 125 years, marriages after 100 years, and deaths after 75 years. Section 27 clarifies that no other records shall be made available to the public.

These detrimental restrictions run contrary to the principles of open access to government records that date back to common law. Vital records across the English-speaking world are largely public records. In the United Kingdom and Ireland, a simple request to the General Register Office and payment of a nominal fee results in the ability to obtain any birth, marriage, or death record dating from 1837 to the present day. This is similar to many states in the United States, such as Massachusetts and Ohio, where all vital records are made public even in certified form. Other states, such as California and Minnesota, make uncertified copies publicly available. Historically, vital records were court records in many states, and as such, were openly accessible by the public.

The National Association for Public Health Statistics and Information Systems (NAPHSIS) claims that restrictions on access to vital records are necessary to prevent identity theft but has never provided evidence to demonstrate that public access to vital records has ever *resulted* in identity theft. This speculative claim creates fear and unnecessary and restrictive regulations. It

is clear that these fears are unfounded because there are many states (and countries) that maintain transparent vital records. To our knowledge, there is no public outcry urging restrictions on record accessibility from the millions of individuals in Ohio, California, Minnesota, or Massachusetts. Furthermore, many other states have reached more reasonable statutory compromises with privacy advocates than what the Model Act sets forth.

The inherent research value of vital records is self-evident. Specifically, genealogists use them to build family trees and to locate heirs to settle estates; medical researchers use them for public health research; and demographers and historians use them for population studies. While the Model Act allows extremely old records to become public, the restrictions on access are excessive and serve no purpose other than creating an illusion of privacy.

Countless public records exist that provide equally detailed information about specific segments of the United States population as the information found in vital records. For example:

- In many (if not most) states, public voter registration records provide some combination of voters' names, addresses, and dates of birth.
- Court probate records not only discuss heirs of estates but often include copies of death certificates.
- Land records disclose individuals' names and their addresses. Sometimes these records even reference peoples' deaths and include copies of death certificates.
- Under the federal Freedom of Information Act, records of deceased people are generally disclosable, so anyone can request military personnel files, passport applications, immigration and alien files, pension records, and Social Security applications (including the Social Security number) of deceased individuals. Often, these files contain copies of vital records. This is because there is no privacy concern in protecting the records of deceased individuals and no harm comes to any party.

The proposed Model Act creates a FOIA exemption for not only vital records, but vital records indexes, thus closing off even the modicum of access allowed in many closed-records states. This provides no clear societal benefit. The proposal operates under the assumption that the mere existence of certain records produced during the duration of an individual's lifetime should remain hidden. However, this assumption is both at odds with reality and contrary to public policy. Aside from any research interests, there are several reasons why access to vital records is beneficial to society, including:

- Verifying if potential spouses are still married.
- Determining if a friend or a loved one has passed away.
- Ensuring that voter rolls are up to date.

- Quickly and accurately closing estates.
- Identifying inherited illnesses early in life.
- Confirming whether an individual is impersonating a deceased person is a critical aspect of fraud prevention. Paradoxically, the 75-year prohibition on accessing death records actually hinders fraud prevention.

While there is arguably a privacy interest in recently created records of the living, there is absolutely no public interest in restricting access to death records, as public death records explicitly reduce the possibility of identity theft or fraud. The former New York City Registrar, a former NAPHSIS leader, boasted about this in public testimony in 2017, stating that it was impossible to verify if someone in the city had died. However, despite the assertions of safeguarding the citizenry, restricting this type of information only makes fraud easier. In closed- records states, lenders and other financial representatives do not have a convenient mechanism to verify an individual's death.

NAPHSIS implicitly admits this. Even though it seeks to prevent *citizens* from obtaining vital records, it simultaneously facilitates the creation of interstate agreements that allows *corporations* to obtain the very same information — albeit for a fee — as a part of the Electronic Verification of Vital Events System. Under the NAPHSIS regime, vital records are closed off to the public in the name of safety, but if private corporations pay them a fee, *they* get access to it. While it is laudable to create a streamlined clearinghouse for vital records data, it is unacceptable for NAPHSIS to both control access while engaging in rent-seeking behavior regarding these records that should rightfully be public.

Furthermore, there are numerous ways to protect the identity of individuals while allowing researchers access to records, notably but not limited to:

- Allowing only uncertified copies of certificates to be released to third parties, as is done in states like Washington, New Jersey, Minnesota, and California.
- Allowing registered genealogists to access records that are not otherwise public, as done in Connecticut and Maine.
- Making indexes available through to the present time while the underlying certificates are restricted for a certain period, as done in Hawaii or Virginia.
- Restricting access to birth records, while leaving marriage and death records public, as done in Florida.

While APG maintains its position that all vital records should be publicly available, we understand there are valid and differing perspectives on the matter. We believe that there are many possible compromises that can both protect individuals' privacy while still permitting our members access to the bulk of the information necessary for their work.

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NAPHSIS needs to follow the path of dozens of states with open records and revise the model to allow access to what ought to remain public records. The proposed restrictions are a solution to a nonexistent problem, and we urge NAPHSIS to reconsider.

Respectfully,

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