S T A T E O F N E W Y O R K

388

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

Introduced by Sen. KRUEGER -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the domestic relations law, in relation to advanced written consent and directives for the transfer, use, and disposition of gametes or embryos cryopreserved in the course of a program of assisted reproductive technology

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The domestic relations law is amended by adding a new article 8-A to read as follows:

ARTICLE 8-A

CRYOPRESERVED EMBRYOS OR GAMETES

SECTION 130. DEFINITIONS.

131. ADVANCE WRITTEN CONSENT AND DIRECTIVES FOR THE TRANSFER, USE, AND DISPOSITION OF CRYOPRESERVED EMBRYOS OR GAMETES.

S 130. DEFINITIONS. WHEN USED IN THIS ARTICLE, UNLESS THE CONTEXT OR SUBJECT MATTER CLEARLY REQUIRES A DIFFERENT MEANING:

1. "ABANDON BY REQUEST" SHALL MEAN THAT A PARTY INTENDS TO CEASE PARTICIPATION IN AN ASSISTED REPRODUCTIVE TECHNOLOGY PROGRAM AND NOTIFIES A PROVIDER OF ASSISTED REPRODUCTIVE SERVICES OF SUCH INTENT IN A WRITTEN, SIGNED, AND NOTARIZED LETTER OF INTENT TO ABANDON BY REQUEST. WITHIN THIRTY DAYS OF RECEIPT OF A PARTY'S LETTER OF INTENT TO ABANDON BY REQUEST, THE PROVIDER SHALL SEND, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO ANY OTHER PARTY WHOSE PARTICIPATION IN SUCH PROVIDER'S ASSISTED REPRODUCTIVE SERVICES MAY BE AFFECTED BY THE REQUESTING PARTY'S ABANDONMENT BY REQUEST, A WRITTEN NOTICE THAT THE TERMS OF AN EXECUTED ADVANCE DIRECTIVE FOR DISPOSITION WILL BE IMPLEMENTED. IF ANY PARTY IS ALSO A PATIENT, A COPY OF SUCH NOTICE AND PROOF OF MAILING SHALL BE KEPT

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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IN THAT PARTY'S MEDICAL RECORDS. ON THE THIRTIETH DAY AFTER THE DATE ON THE LETTER OF NOTIFICATION, OR, IF THERE ARE NO OTHER AFFECTED PARTIES, ON THE THIRTIETH DAY AFTER THE PROVIDER'S RECEIPT OF THE LETTER OF INTENT TO ABANDON BY REQUEST, THE PROVIDER SHALL IMPLEMENT THE APPLICABLE TERMS OF THE REQUESTING PARTY'S EXECUTED ADVANCE DIRECTIVE FOR DISPOSITION.

2. "ASSISTED REPRODUCTIVE TECHNOLOGY" SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING METHODS OF ASSISTING IN FERTILIZATION: IN VITRO FERTILIZATION-EMBRYO TRANSFER, GAMETE INTRAFALLOPIAN TRANSFER, AND CRYOPRESERVATION.

3. "CRYOPRESERVATION" SHALL MEAN THE STORAGE OF GAMETES OR EMBRYOS PRODUCED BY MEANS OF AN ASSISTED REPRODUCTIVE TECHNOLOGY PROCEDURE AND PRESERVED BY MEANS OF LOW-TEMPERATURE FREEZING IN LIQUID NITROGEN OR OTHER SIMILAR MEDIUM.

4. "EMBRYO" SHALL MEAN A FERTILIZED HUMAN OVUM.

5. "FAILURE TO PAY STORAGE FEES" SHALL MEAN THAT A PROVIDER TO WHOM A PARTY PAYS A STORAGE FEE HAS NOT RECEIVED A FEE FROM SUCH PARTY FOR THREE CONSECUTIVE YEARS. AFTER THREE CONSECUTIVE YEARS OF NONPAYMENT, THE PROVIDER SHALL NOTIFY IN WRITING BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, SENT TO THE LAST KNOW ADDRESS OF THE NON-PAYING PARTY, AND TO THE LAST KNOWN ADDRESS OF ANY OTHER PARTY WHOSE PARTICIPATION MAY BE AFFECTED BY THE NON-PAYING PARTY'S FAILURE TO PAY STORAGE FEES, A WRITTEN NOTICE THAT, UNLESS THE PROVIDER IS CONTACTED AND INSTRUCTED TO DO OTHERWISE, THE TERMS OF AN EXECUTED ADVANCED DIRECTIVE FOR DISPOSITION IN THE EVENT OF FAILURE TO PAY STORAGE FEES WILL BE IMPLEMENTED. SIX MONTHS FROM THE DATE OF THE FIRST NOTICE, A SECOND SUCH NOTICE SHALL BE MAILED IN THE SAME MANNER AS THE FIRST NOTICE. IF THE NON-PAYING PARTY OR AN AFFECTED PARTY IS ALSO A PATIENT, A COPY OF SUCH NOTICE OR NOTICES AND PROOFS OF MAILING SHALL BE KEPT IN THAT PARTY'S MEDICAL RECORDS. IF THE PROVIDER RECEIVES NO INSTRUCTION TO DO OTHERWISE IN RESPONSE TO EITHER THE FIRST OR SECOND NOTIFICATION, ON THE THIRTIETH DAY AFTER THE DATE OF THE SECOND LETTER OF NOTIFICATION, THE PROVIDER SHALL IMPLEMENT THE TERMS OF THE NON-PAYING PARTY'S EXECUTED ADVANCE DIRECTIVE FOR DISPOSITION IN THE EVENT OF FAILURE TO PAY STORAGE FEES.

6. "GAMETES" SHALL MEAN HUMAN SPERM OR OVA.

7. "PATIENT" SHALL MEAN A PERSON WHO DONATES OR RECEIVES A GAMETE OR EMBRYO.

8. "PARTY" SHALL MEAN A NATURAL PERSON WHO EXECUTES, ACCORDING TO THE PROVISIONS OF SECTION ONE HUNDRED THIRTY-ONE OF THIS ARTICLE, A PROVIDER'S ADVANCE WRITTEN CONSENT AND DIRECTIVES FOR THE TRANSFER, USE, AND DISPOSITION OF CRYOPRESERVED EMBRYOS OR GAMETES FOR ASSISTED REPRODUCTIVE SERVICES.

9. "PROVIDER" SHALL MEAN AN INDIVIDUAL, CORPORATION, OTHER BUSINESS ENTITY, OR NON-PROFIT ENTITY ENGAGED IN PROVIDING ASSISTED REPRODUCTIVE TECHNOLOGY SERVICES.

S 131. ADVANCE WRITTEN CONSENT AND DIRECTIVES FOR THE TRANSFER, USE, AND DISPOSITION OF CRYOPRESERVED EMBRYOS OR GAMETES. 1. ANY PROVIDER LOCATED IN NEW YORK STATE WHOSE SERVICES INCLUDE THE CRYOPRESERVATION OF GAMETES OR EMBRYOS, AND BEFORE PROVIDING ANY SUCH SERVICES, SHALL REQUIRE THE PRIOR EXECUTION, PURSUANT TO THIS SECTION, OF ADVANCE WRITTEN CONSENT AND DIRECTIVES AS TO THE TRANSFER, USE, AND DISPOSITION OF SUCH GAMETES OR EMBRYOS. PRIOR TO RECEIVING ANY ASSISTED REPRODUCTIVE TECHNOLOGY SERVICE, ON A FORM OR FORMS PRESCRIBED BY THE COMMISSIONER OF HEALTH, SUCH CONSENT AND DIRECTIVES SHALL BE SIGNED AND DATED, IN THE PRESENCE OF EACH OTHER, BY THE PARTY REQUESTING SERVICES, A WITNESS FOR THE REQUESTING PARTY, AND A LICENSED PHYSICIAN AUTHORIZED BY THE PROVID-

ER. NOTHING CONTAINED IN THIS SECTION SHALL AFFECT THE OBLIGATION OF A PHYSICIAN OR SURGEON UNDER CURRENT LAW TO OBTAIN THE INFORMED CONSENT OF A PARTY WHO MAY ALSO BE A PATIENT PRIOR TO SUCH PHYSICIAN'S OR SURGEON'S PERFORMING ANY MEDICAL OR SURGICAL PROCEDURE FOR WHICH INFORMED CONSENT IS OTHERWISE REQUIRED.

2. (A) THE FORM FOR ADVANCE WRITTEN CONSENT TO ASSISTED REPRODUCTIVE SERVICES EXECUTED BY A PARTY WHO IS ALSO A PATIENT SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING INFORMATION: (I) THE PATIENT'S NAME; (II) THE PATIENT'S ADDRESS, TELEPHONE NUMBER, OR OTHER RELEVANT CONTACT INFORMATION; (III) THE TYPE AND QUANTITY, IF APPLICABLE, OF SPERM, OVA, OR EMBRYOS DONATED OR RECEIVED; AND (IV) THE NAME OF THE CLINIC, OR OTHER DONEE FOR A SPECIFIED PURPOSE, WHICH PURPOSE SHALL BE CLEARLY STATED.

(B) THE FORM FOR ADVANCE WRITTEN CONSENT TO ASSISTED REPRODUCTIVE SERVICES EXECUTED BY A PARTY WHO IS ALSO A PATIENT SHALL BE SIGNED AND DATED BY THE PATIENT, THE ATTENDING PHYSICIAN OR SURGEON, A PROVIDER-AUTHORIZED CLINICIAN WHO SHALL VERIFY THE TYPE AND QUANTITY, IF APPLICABLE, OF SPERM, OVA, OR EMBRYOS DONATED OR RECEIVED, AND ANY OTHER SIGNATORIES REQUIRED BY SUBDIVISION ONE OF THIS SECTION. THE ORIGINAL EXECUTED CONSENT FORM SHALL BE RETAINED IN THE PROVIDER'S BUSINESS RECORDS, THE MEDICAL RECORDS OF THE PARTY WHO IS ALSO A PATIENT, AND A COPY SHALL BE PROVIDED TO THE PARTY.

3. (A) THE FORM PRESCRIBING DIRECTIVES AS TO THE DISPOSITION OF CRYOPRESERVED GAMETES OR EMBRYOS SHALL INCLUDE, BUT NOT BE LIMITED TO, CHOICES FOR DISPOSITION UNDER THE FOLLOWING CIRCUMSTANCES: (I) DEATH OF A PARTY; (II) THE PARTY'S SEPARATION OR DIVORCE; (III) THE PARTY'S DECISION TO ABANDON BY REQUEST CRYOPRESERVED GAMETES OR EMBRYOS; OR (IV) THE PARTY'S ABANDONMENT OF CRYOPRESERVED GAMETES OR EMBRYOS BY FAILURE TO PAY STORAGE FEES.

(B) THE FORM PRESCRIBING DIRECTIVES AS TO THE DISPOSITION OF CRYOPRESERVED GAMETES OR EMBRYOS SHALL INCLUDE, BUT NOT BE LIMITED TO, CHOICES AND DIRECTION FOR THE FOLLOWING DISPOSITION OPTIONS: (I) MADE AVAILABLE, TRANSFERRED, OR DONATED TO ANOTHER PARTY; (II) DONATED FOR RESEARCH PURPOSES; (III) THAWED WITH NO FURTHER ACTION TAKEN; OR (IV) OTHER DISPOSITION, PROVIDED THAT SUCH DISPOSITION SHALL BE CLEARLY STATED.

(C) THE FORM PRESCRIBING DIRECTIVES AS TO THE DISPOSITION OF CRYOPRESERVED GAMETES OR EMBRYOS SHALL CLEARLY STATE THE PROVIDER'S TIME LIMIT ON STORAGE OF SUCH GAMETES OR EMBRYOS; SUCH TIME LIMIT SHALL NOT BE LESS THAN THREE YEARS.

(D) A PARTY WHO CHOOSES THE OPTION TO DONATE TO ANOTHER PARTY PURSUANT TO SUBPARAGRAPH (I) OF PARAGRAPH (B) OF THIS SUBDIVISION SHALL MEET SUCH DONOR QUALIFICATIONS AS MAY BE REQUIRED IN APPLICABLE LAW AND REGULATIONS.

(E) A PARTY MAY MODIFY DIRECTIVES FOR DISPOSITION OF CRYOPRESERVED GAMETES AND EMBRYOS AT A LATER DATE; PROVIDED THAT SUCH MODIFICATION SHALL BE EXECUTED IN THE SAME MANNER AS IS REQUIRED FOR AN INITIAL CONSENT AND DIRECTIVE PURSUANT TO SUBDIVISION ONE OF THIS SECTION.

S 2. This act shall take effect on the two hundred eightieth day after it shall have become a law; provided, however, that, effective immediately, the commissioner of health is authorized to promulgate any and all rules and regulations and take any other measures necessary to implement this act on its effective date on or before such date.