STATE OF NEW YORK

7749

2023-2024 Regular Sessions

IN SENATE

November 13, 2023

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

AN ACT to amend the family court act, the public health law, the general business law and the insurance law, in relation to surrogacy programs and agreements; and to amend the social services law, in relation to enrollment in the state health insurance exchange

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 581-102 of the family court act, as added by section 1 of part L of chapter 56 of the laws of 2020, is amended to read as follows:

§ 581-102. Definitions. (a) "Assisted reproduction" means a method of causing pregnancy other than sexual intercourse and includes but is not limited to:

1. intrauterine or vaginal insemination;
2. donation of gametes;
3. donation of embryos;
4. in vitro fertilization and transfer of embryos; and
5. intracytoplasmic sperm injection.

(b) **"Central assisted reproduction registry" means the registry established pursuant to section twenty-five hundred ninety-nine-cc of the public health law.**

(c) "Child" means a born individual of any age whose parentage may be determined under this act or other law.

[~~(c)~~] **(d)** "Compensation" means payment of any valuable consideration in excess of reasonable medical and ancillary costs.

[~~(d)~~] **(e)** "Donor" means an individual who does not intend to be a parent who produces gametes and provides them to another person, other than the individual's spouse, for use in assisted reproduction. **For purposes of parts eight and ten of this article and of governing statutes and regulations, the term "donor" means an individual who does not**

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

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intend to be a parent who receives compensation for time and effort to produce gametes for use in assisted reproduction by an intended parent or parents who are unknown to the donor of the gametes at the time of donation. The term does not include a person who is a parent under part three of this article. Donor also includes an individual who had dispositional control of an embryo or gametes who then transfers dispositional control and releases all present and future parental and inheritance rights and obligations to a resulting child.

[~~(e)~~] (f) "Donor-conceived person or individual" means an individual of any age who was conceived using assisted reproduction and donor gametes that were produced by a donor who received compensation for time and effort and who was unknown to the intended parent or parents at the time of donation.

(g) "Embryo" means a cell or group of cells containing a diploid complement of chromosomes or group of such cells, not a gamete or gametes, that has the potential to develop into a live born human being if transferred into the body of a person under conditions in which gestation may be reasonably expected to occur.

[~~(f)~~] (h) "Embryo transfer" means all medical and laboratory procedures that are necessary to effectuate the transfer of an embryo into the uterine cavity.

[~~(g)~~] (i) "Gamete" means a cell containing a haploid complement of DNA that has the potential to form an embryo when combined with another gamete. Sperm and eggs shall be considered gametes. A human gamete used or intended for reproduction may not contain nuclear DNA that has been deliberately altered, or nuclear DNA from one human combined with the cytoplasm or cytoplasmic DNA of another human being.

[~~(h)~~] (j) "Gamete donation agency agreement" means an agreement between a gamete donor or an intended parent or parents and an agent, gamete agency, gamete bank, fertility clinic, surrogacy program, or health care provider that details the terms under which: (A) a donor shall receive compensation for time and effort to produce gametes for use in assisted reproduction by an intended parent or parents who is unknown to the donor of the gametes at the time of donation; or (B) an intended parent or parents shall receive fresh or frozen donor gametes.

(k) "Gamete donation matched agreement" means an agreement between a gamete donor and an intended parent or parents that details the terms under which a donor shall receive compensation for time and effort to produce gametes for use in assisted reproduction by the intended parent or parents who is unknown to the donor of the gametes at the time of donation.

(l) "Health care practitioner" means an individual licensed or certified under title eight of the education law, or a similar law of another state or country, acting within his or her scope of practice.

(m) "Identified gamete donation or identified gamete donor" means that the gamete donor agrees to release identifying and medical information upon request to a donor-conceived individual who was conceived using their donor gametes and assisted reproduction once the donor-conceived individual attains the age of eighteen, or to a legal parent or guardian if the donor-conceived individual is under the age of eighteen.

(n) "Independent escrow agent" means someone other than the parties to a surrogacy agreement and their attorneys. An independent escrow agent can, but need not, be a surrogacy program, provided such surrogacy program is owned [~~or managed~~] by an attorney licensed to practice law in the state of New York. If such independent escrow agent is not an attorney owned surrogacy program, it shall be [~~licensed,~~] bonded and insured.

[~~(i) "Surrogacy agreement" is an agreement between at least one intended parent and a person acting as surrogate intended to result in a live birth where the child will be the legal child of the intended parents.~~

~~(j)~~] (o) "Informed legal consent" means that a potential gamete donor, a potential person acting as surrogate, or an intended parent or parents provide fully-informed legal consent in a signed written statement to enter into a gamete donation matched agreement, a gamete donation agency agreement, or a surrogacy agreement after completing the required informed legal consent procedures under part ten of this article.

(p) "Informed medical consent" means that a potential gamete donor, a potential person acting as surrogate, or an intended parent or parents provide fully-informed medical consent in a signed written statement to enter into a gamete donation matched agreement, a gamete donation agency agreement, or a surrogacy agreement after completing the informed medical consent procedures under part ten of this article. Informed medical consent to enter into a gamete donation or surrogacy agreement does not replace the medical consent that a gamete donor, a person acting as surrogate, or an intended parent or parents must provide prior to undergoing individual medical procedures.

(q) "In vitro fertilization" means the formation of a human embryo outside the human body.

(r) "Intended parent" means an individual who manifests the intent to be legally bound as the parent of a child resulting from assisted reproduction or a surrogacy agreement, provided he or she meets the requirements of this article.

(s) "Nonidentified gamete donation or nonidentified gamete donor" means that the gamete donor does not agree to release identifying information to a donor-conceived individual who was conceived using their donor gametes and assisted reproduction, or to a legal parent or guardian of the donor-conceived individual. A nonidentified gamete donor is informed that the department may release their nonidentifying medical information upon request of a donor-conceived individual upon attaining eighteen years of age, or of a legal parent or guardian if the donor-conceived individual is under the age of eighteen.

(t) "Parent" as used in this article means an individual with a parent-child relationship created or recognized under this act or other law.

(u) "Participant" means an individual who either provides a gamete that is used in assisted reproduction, is an intended parent, is a person acting as surrogate, or is the spouse of an intended parent or person acting as surrogate.

(v) "Person acting as surrogate" means an adult person, not an intended parent, who enters into a surrogacy agreement to bear a child who will be the legal child of the intended parent or parents so long as the person acting as surrogate has not provided the egg used to conceive the resulting child.

[~~(k) "Health care practitioner" means an individual licensed or certified under title eight of the education law, or a similar law of another state or country, acting within his or her scope of practice.~~

~~(l) "Intended parent" is an individual who manifests the intent to be legally bound as the parent of a child resulting from assisted reproduction or a surrogacy agreement provided he or she meets the requirements of this article.~~

~~(m) "In vitro fertilization" means the formation of a human embryo outside the human body.~~

~~(n) "Parent" as used in this article means an individual with a parent-child relationship created or recognized under this act or other law.~~

~~(o) "Participant" is an individual who either: provides a gamete that is used in assisted reproduction, is an intended parent, is a person acting as surrogate, or is the spouse of an intended parent or person acting as surrogate.~~

~~(p)~~] (w) "Record" means information inscribed in a tangible medium or stored in an electronic or other medium that is retrievable in perceivable form.

[~~(q)~~] (x) "Retrieval" means the procurement of eggs or sperm from a gamete provider.

[~~(r)~~] (y) "Spouse" means an individual married to another, or who has a legal relationship entered into under the laws of the United States or of any state, local or foreign jurisdiction, which is substantially equivalent to a marriage, including a civil union or domestic partnership.

[~~(s)~~] (z) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

[~~(t)~~] (aa) "Surrogacy agreement" means an agreement between at least one intended parent and a person acting as surrogate intended to result in a live birth where the child will be the legal child of the intended parents.

(bb) "Transfer" means the placement of an embryo or gametes into the body of a person with the intent to achieve pregnancy and live birth.

§ 2. Section 581-202 of the family court act, as added by section 1 of part L of chapter 56 of the laws of 2020, is amended to read as follows:

§ 581-202. Proceeding for judgment of parentage of a child conceived through assisted reproduction. (a) A proceeding for a judgment of parentage with respect to a child conceived through assisted reproduction may be commenced:

(1) if [~~the~~] an intended parent or child resides in New York state, in the county where the intended parent resides any time after the first trimester of pregnancy [~~is achieved~~] or in the county where the child was born or resides; or

(2) if [~~the~~] neither an intended parent [~~and~~] nor the child [~~do not~~] reside in New York state, up to ninety days after the birth of the child in the county where the child was born.

(b) The petition for a judgment of parentage must be verified.

(c) Where [~~a petition includes the following truthful~~] the court finds the following statements in the petition to be true, the court shall adjudicate the intended parent or parents to be the parent or parents of the child:

(1) a statement that an intended parent has been a resident of the state for at least six months, or if an intended parent is not a New York state resident, that the child will be or was born in the state within ninety days of filing; and

(2) a statement from the gestating intended parent that the gestating intended parent became pregnant as a result of assisted reproduction; and

(3) in cases where there is a non-gestating intended parent, a statement from the gestating intended parent and non-gestating intended parent that the non-gestating intended parent consented to assisted reproduction pursuant to section 581-304 of this article; and

(4) proof of any donor's donative intent.

(d) The following shall be deemed sufficient proof of a donor's donative intent for purposes of this section:

(1) in the case of [~~an anonymous~~] a nonidentified donor [~~or~~] who received compensation for time and effort to produce gametes for use in assisted reproduction by an intended parent or parents who were unknown to the donor of the gametes at the time of donation, a signed record from the gamete storage facility, fertility clinic, health care practitioner, or other entity that collected the donor gametes, or that received the donor gametes from another entity, stating or demonstrating that such gametes were donated on a nonidentified basis and that the gamete donor has no proprietary or parental interest in the gametes or embryos. The record shall be signed by the health care practitioner or by a representative of the gamete storage facility, fertility clinic, or other entity:

(i) before a notary public, or

(ii) before two witnesses who are neither the intended parents nor employed by the health care practitioner, gamete storage facility, fertility clinic, or other entity; provided that if the record is signed before two witnesses, the name, phone number, email address, and mailing address of each witness must be recorded; or

(2) in the case of an identified donor who received compensation for time and effort to produce gametes for use in assisted reproduction by an intended parent or parents who were unknown to the donor of the gametes at the time of donation, a signed record from the gamete donor certifying that they agreed to identified gamete donation and have no proprietary or parental interest in the gametes or embryos. The record shall be signed:

(i) before a notary public, or

(ii) before two witnesses who are not the intended parents; provided that if the record is signed before two witnesses, the name, phone number, email address, and mailing address of each witness must be recorded; or

(3) where gametes or embryos have previously been released to a gamete or embryo storage facility or in the presence of a health care practitioner, either:

(i) a statement or documentation from the gamete or embryo storage facility or health care practitioner stating or demonstrating that such gametes or embryos were [~~anonymously~~] donated on an identified or nonidentified basis, or had previously been released; or

(ii) clear and convincing evidence that the gamete or embryo donor intended to donate gametes or embryos [~~anonymously~~] on an identified or nonidentified basis, or intended to release such gametes or embryos to a gamete or embryo storage facility or health care practitioner; or

[~~(2)~~] (4) in the case of a donation from a [~~known~~] donor who is known to the intended parent or parents, either: [~~a.~~]

(i) a record from the gamete or embryo donor acknowledging the donation and confirming that the donor has no parental or proprietary interest in the gametes or embryos. The record shall be signed by the gestating intended parent and the gamete or embryo donor[~~. The record may be, but is not required to be, signed~~] or donors:

[~~(i)~~] (A) before a notary public, or

[~~(ii)~~] (B) before two witnesses who are not the intended parents; provided that if the record is signed before two witnesses who are not the intended parents, the name, phone number, email address, and mailing address of each witness must be recorded, or

[~~(iii)~~] (C) before a health care practitioner; or
[~~b.~~] (ii) clear and convincing evidence that the gamete or embryo donor agreed, prior to conception, with the gestating parent and non-gestating parent, if applicable, that the donor [~~has~~] or donors have no parental or proprietary interest in the gametes or embryos.

(e) (1) In the absence of evidence pursuant to paragraph two of this subdivision, notice shall be given to the donor at least twenty days prior to the date set for the proceeding to determine the existence of donative intent by delivery of a copy of the petition and notice pursuant to section three hundred eight of the civil practice law and rules. Such notice shall also be given to the gestating intended parent, the non-gestating intended parent, if applicable, and the gestating intended parent's spouse, if applicable, each of whom shall be a necessary party. Upon a showing to the court, by affidavit or otherwise, on or before the date of the proceeding or within such further time as the court may allow, that personal service cannot be effected at the [~~donor's~~] last known address or addresses of the donor or donors, and/or the non-petitioning intended parent, if any, with reasonable effort, notice may be given, without prior court order therefore, at least twenty days prior to the proceeding by registered or certified mail directed to [~~the donor's~~] such last known address or addresses. Notice by publication shall not be required to be given to [~~a donor~~] anyone entitled to notice pursuant to the provisions of this section.

(2) Notwithstanding the above, where sperm is provided under the supervision of a health care practitioner to someone other than the sperm provider's intimate partner or spouse without a record of the sperm provider's intent to parent notice is not required.

(f) In cases not covered by subdivision (c) of this section, the court shall adjudicate the parentage of the child consistent with part three of this article.

(g) Where the requirements of subdivision (c) of this section are met or where the court finds the intended parent or parents to be a parent under subdivision [~~(e)~~] (f) of this section, the court shall issue a judgment of parentage:

(1) declaring, that upon the birth of the child, the intended parent or parents is or are the legal parent or parents of the child; and

(2) ordering the intended parent or parents to assume responsibility for the maintenance and support of the child immediately upon the birth of the child; and

(3) if there is a donor or donors, ordering that [~~the~~] any donor is not a parent of the child; and

(4) ordering that:

(i) Pursuant to section two hundred fifty-four of the judiciary law, the clerk of the court shall transmit to the state commissioner of health, or for a person born in New York city, to the commissioner of health of the city of New York, on a form prescribed by the commissioner, a written notification of such entry together with such other facts as may assist in identifying the birth record of the person whose parentage was in issue and, if such person whose parentage has been determined is under eighteen years of age, the clerk shall also transmit forthwith to the registry operated by the department of social services pursuant to section three hundred seventy-two-c of the social services law a notification of such determination; and

(ii) Pursuant to section forty-one hundred thirty-eight of the public health law and NYC Public Health Code section 207.05 that upon receipt of a judgment of parentage the local registrar where a donor-conceived

or surrogate-born child is born will report the parentage of the donor-conceived or surrogate-born child to the appropriate department of health in conformity with the court order. [~~If an~~] After the original birth certificate has [~~already~~] been issued, the appropriate department of health will amend the birth certificate in an expedited manner and seal the [~~previously issued~~] original birth certificate [~~except that it may be rendered~~] which shall be accessible to the [~~child~~] donor-conceived or surrogate-born person at eighteen years of age or [~~the~~] to a legal parent or [~~parents.~~] guardian if the donor-conceived or surrogate-born person is under the age of eighteen; and

(5) if the judgment of parentage is issued prior to the birth of the child, ordering the petitioner or petitioners, within seven days of such birth, to provide the court with notification thereof, together with such other facts as may assist in identifying the birth record of the child whose parentage was in issue. Such notification shall be in writing on a form to be prescribed by the chief administrator of the courts. The court shall thereafter issue an amended judgment of parentage that includes the child's name as it appears on the child's birth certificate and the child's date of birth.

(h) For the purposes of this section, "original birth certificate" means the unamended birth certificate that contains the information required under section forty-one hundred thirty-two of the public health law, including the name of the person who acted as surrogate who gave birth to the child, and the name of any identified gamete donor or the donor reference number of any nonidentified gamete donor whose gametes were used in assisted reproduction to conceive the child.

§ 3. Section 581-203 of the family court act, as added by section 1 of part L of chapter 56 of the laws of 2020, is amended to read as follows:

§ 581-203. Proceeding for judgment of parentage of a child conceived pursuant to a surrogacy agreement. (a) The proceeding may be commenced:

(1) in any county where an intended parent resided any time after the surrogacy agreement was executed;

(2) in the county where the child was born or resides; or

(3) in the county where the surrogate resided any time after the surrogacy agreement was executed.

(b) The proceeding may be commenced at any time after the [~~surrogacy agreement has been executed~~] first trimester of the surrogate pregnancy and the person acting as surrogate, the spouse of the person acting as surrogate, if applicable, any donor for whom there is not proof of donative intent as set forth in subdivision (d) of section 581-202 of this part, if any, and all intended parents are necessary parties. The service provisions of subdivision (e) of section 581-202 of this part shall be applicable to donors entitled to notice pursuant to this provision.

(c) The petition for a judgment of parentage must be verified and include the following:

(1) a statement that the person acting as surrogate [~~or at least one of~~] and the intended parent or parents [~~has~~] have been [~~a resident~~] residents of the state for at least six months at the time the surrogacy agreement was executed and have certified that they will maintain New York state residency for the duration of the surrogate pregnancy and for at least one month following the birth of any children; [~~and~~]

(2) a certification from the attorney representing the intended parent or parents and the attorney representing the person acting as surrogate and the spouse of the person acting as surrogate, if applicable, that the requirements of part four of this article have been met; [~~and~~]

(3) a statement from all parties to the surrogacy agreement that they knowingly and voluntarily entered into the surrogacy agreement and that the parties are jointly requesting the judgment of parentage; and

(4) a copy of the executed surrogacy agreement.

(d) Where the court finds the statements required by subdivision (c) of this section to be true, the court shall issue a judgment of parentage, without additional proceedings or documentation:

(1) declaring, that upon the birth of the child born during the term of the surrogacy agreement, the intended parent or parents are the only legal parent or parents of the child;

(2) declaring, that upon the birth of the child born during the term of the surrogacy agreement, the person acting as surrogate, and the spouse of the person acting as surrogate, if [~~any~~] applicable, is not [~~the~~] a legal parent of the child;

(3) declaring that upon the birth of the child born during the term of the surrogacy agreement, [~~the donors~~] any donor, if [~~any~~] applicable, [~~are~~] is not [~~the parents~~] a parent of the child;

(4) ordering the person acting as surrogate and the spouse of the person acting as surrogate, if any, to transfer the child to the intended parent or parents if this has not already occurred;

(5) ordering the intended parent or parents to assume responsibility for the maintenance and support of the child immediately upon the birth of the child; and

(6) ordering that:

(i) Pursuant to section two hundred fifty-four of the judiciary law, the clerk of the court shall transmit to the state commissioner of health, or for a person born in New York city, to the commissioner of health of the city of New York, on a form prescribed by the commissioner, a written notification of such entry together with such other facts as may assist in identifying the birth record of the person whose parentage was in issue and, if the person whose parentage has been determined is under eighteen years of age, the clerk shall also transmit to the registry operated by the department of social services pursuant to section three hundred seventy-two-c of the social services law a notification of the determination; and

(ii) Pursuant to section forty-one hundred thirty-eight of the public health law and NYC Public Health Code section 207.05 that upon receipt of a judgement of parentage the local registrar where a child is born will report the parentage of the child to the appropriate department of health in conformity with the court order. [~~If an~~] After the original birth certificate has [~~already~~] been issued, the appropriate department of health will amend the birth certificate in an expedited manner and seal the [~~previously issued~~] original birth certificate [~~except that it may be rendered~~] which shall be accessible to the [~~child~~] donor-conceived or surrogate-born person at eighteen years of age or [~~the~~] to a legal parent or [~~parents~~] guardian if the donor-conceived or surrogate-born person is under the age of eighteen; and

(7) if the judgment of parentage is issued prior to the birth of the child, ordering the petitioner or petitioners, within seven days of such birth, to provide the court with notification thereof, together with such other facts as may assist in identifying the birth record of the child whose parentage was in issue. Such notification shall be in writing on a form to be prescribed by the chief administrator of the courts. The court shall thereafter issue an amended judgment of parentage that includes the child's name as it appears on the child's birth certificate and the child's date of birth.

(e) In the event the certification required by paragraph two of subdivision (c) of this section cannot be made because of a technical or non-material deviation from the requirements of this article; the court may nevertheless enforce the agreement and issue a judgment of parentage if the court determines the agreement is in substantial compliance with the requirements of this article. In the event that any other requirements of subdivision (c) of this section are not met, the court shall determine parentage according to part four of this article.

(f) For the purposes of this section, "original birth certificate" means the unamended birth certificate that contains the information required under section forty-one hundred thirty-two of the public health law, including the name of the person who acted as surrogate who gave birth to the child, and the name of any identified gamete donor or the donor reference number of any nonidentified gamete donor whose gametes were used in assisted reproduction to conceive the child.

§ 4. Section 581-205 of the family court act, as added by section 1 of part L of chapter 56 of the laws of 2020, is amended to read as follows:

§ 581-205. Inspection of records. **(a)** Court records relating to proceedings under this article shall be sealed, provided, however, that the office of temporary and disability assistance, a child support unit of a social services district or a child support agency of another state providing child support services pursuant to title IV-d of the federal social security act, when a party to a related support proceeding and to the extent necessary to provide child support services or for the administration of the program pursuant to title IV-d of the federal social security act, may obtain a copy of a judgment of parentage. The parties to the proceeding and the child shall have the right to inspect and make copies of the entire court record, including, but not limited to, the name of the person acting as surrogate and**, prior to the effective date of section fourteen hundred five of the general business law, the name of** any [~~known donors~~] **identified gamete donor or the donor reference number of any nonidentified gamete donor, and after the effective date of section fourteen hundred five of the general business law, the name of any identified gamete donor. Pursuant to section forty-one hundred thirty-eight-e of the public health law, a person who is donor-conceived or surrogate-born under section 581-202 or 581-203 of this part has the right to obtain a certified copy of their original birth certificate. Notwithstanding any other provision of law, the county clerk or the clerk of the supreme, surrogate's or family court shall not display the surname of the child or parties in any document, index, minutes or other record available to the public**.

(b) For the purposes of this section, "original birth certificate" means the unamended birth certificate that contains the information required under section forty-one hundred thirty-two of the public health law, including the name of the person who acted as surrogate who gave birth to the child, and the name of any identified gamete donor or the donor reference number of any nonidentified gamete donor whose gametes were used in assisted reproduction to conceive the child.

§ 5. Subdivision (a) of section 581-206 of the family court act, as added by section 1 of part L of chapter 56 of the laws of 2020, is amended to read as follows:

(a) Proceedings pursuant to this article may be instituted in [~~the~~] **New York state** supreme [~~or~~] **court,** family court or surrogates court.

§ 6. The family court act is amended by adding a new section 581-207 to read as follows:

§ 581-207. Certified copy of judgment of parentage. Upon issuing a judgment of parentage pursuant to section 581-202 or 581-203 of this part, the issuing court shall provide a certified copy of such judgment to the intended parent or parents and if the judgment of parentage is issued pursuant to section 581-203 of this part, to the person acting as surrogate, and the spouse of the person acting as surrogate, if applicable.

§ 7. Subdivision (b) of section 581-303 of the family court act, as added by section 1 of part L of chapter 56 of the laws of 2020, is amended to read as follows:

(b) The court shall issue a judgment of parentage pursuant to this article upon application by any [~~participant~~] person authorized to file a petition pursuant to subdivision (c) of section 581-201 of this article.

§ 8. Paragraph 3 of subdivision (a) and subdivision (d) of section 581-306 of the family court act, as added by section 1 of part L of chapter 56 of the laws of 2020, are amended to read as follows:

(3) where the intended parents are married, transfer of legal rights and dispositional control [~~occurs only~~] becomes effective upon: (i) living separate and apart pursuant to a decree or judgment of separation or pursuant to a written agreement of separation subscribed by the parties thereto and acknowledged or proved in the form required to entitle a deed to be recorded; or (ii) living separate and apart at least three years; or (iii) divorce; or (iv) death.

(d) An embryo disposition agreement [~~or advance directive~~] that is not in compliance with subdivision (a) of this section may still be found to be enforceable by the court after balancing the respective interests of the parties except that the intended parent who divested him or herself of legal rights and dispositional control may not be declared to be a parent for any purpose without his or her consent. The intended parent awarded legal rights and dispositional control of the embryos shall, in this instance, be declared to be the only parent of the child.

§ 9. Section 581-402 of the family court act, as added by section 1 of part L of chapter 56 of the laws of 2020, is amended to read as follows:

§ 581-402. Eligibility to enter surrogacy agreement. (a) A person acting as surrogate shall be eligible to enter into an enforceable surrogacy agreement under this article if the person acting as surrogate has met the following requirements at the time the surrogacy agreement is executed:

(1) the person acting as surrogate is at least twenty-one years of age and less than thirty-five years of age at the time of conception;

(2) the person acting as surrogate has met and has certified that they will continue to meet residency requirements, including:

(i) the person acting as surrogate is a United States citizen or a lawful permanent resident [~~and, where at least one intended parent is not~~];

(ii) the person acting as surrogate has been a resident of New York state for at least six months[~~, was a resident of New York state for at least six months~~] at the time the surrogacy agreement was executed; and

(iii) the person acting as surrogate will maintain New York state residency for the duration of the surrogate pregnancy and for at least one month following the birth of any children;

(3) the person acting as surrogate has not provided the egg used to conceive the resulting child;

(4) the person acting as surrogate has [~~completed~~] obtained written medical clearance to undergo a surrogate pregnancy under this part after

completing a medical evaluation and psychological screening with [~~a~~] an independent health care practitioner licensed under title eight of the education law relating to the anticipated surrogate pregnancy. [~~Such~~] The department shall maintain a list of independent health care providers. The medical evaluation shall include a screening of the medical history of the potential surrogate including known health conditions that may pose risks to the potential surrogate or embryo during pregnancy and any guidelines, procedures, or protocols developed pursuant to paragraph (d) of subdivision one of section twenty-five hundred ninety-nine-cc of the public health law. A potential surrogate shall not obtain written medical clearance to undergo a surrogate pregnancy if they meet any of the disqualifying criteria under paragraph (d) of subdivision one of section twenty-five hundred ninety-nine-cc of the public health law;

(5) the person acting as surrogate must have previously delivered at least one healthy live birth from an uncomplicated pregnancy that was not pursuant to a surrogacy agreement, and all previous pregnancies must have been without serious complications;

(6) the person acting as surrogate has not delivered more than a total of four live children;

(7) the person acting as surrogate has not had any previous cesarean sections;

(8) the person acting as surrogate has given informed medical and legal consent [~~for the surrogacy after the licensed health care practitioner inform them of the medical risks of surrogacy including the possibility of multiple births, risk of medications taken for the surrogacy, risk of pregnancy complications, psychological and psychosocial risks, and impacts on their personal lives;~~] to enter into the surrogacy agreement after completing the informed medical and legal consent procedures pursuant to this article;

[~~(6)~~] (9) the person acting as surrogate, and the spouse of the person acting as surrogate, if applicable, have been represented from the initiation of and throughout the contractual process and the duration of the [~~contract and its execution~~] surrogacy agreement until all of the acts contemplated by the surrogacy agreement have been fulfilled by seperate, independent legal counsel of their own choosing who is licensed to practice law in the state of New York which shall be paid for by the intended parent or parents, except that a person acting as surrogate who is receiving no compensation may waive the right to have the intended parent or parents pay the fee for such legal counsel. Where the intended parent or parents are paying for the independent legal counsel of the person acting as surrogate, and the spouse of the person acting as surrogate, if applicable, a separate retainer agreement shall be prepared clearly stating that such legal counsel will only represent the person acting as surrogate and the spouse of the person acting as surrogate, if applicable, in all matters pertaining to the surrogacy agreement, that such legal counsel will not offer legal advice to any other parties to the surrogacy agreement, and that the attorney-client relationship lies with the person acting as surrogate and the spouse of the person acting as surrogate, if applicable;

[~~(7) the person acting as surrogate has or the surrogacy agreement stipulates that the person acting as surrogate will obtain a comprehensive~~]

(10) the surrogacy agreement must provide that the person acting as surrogate has or will obtain a comprehensive health insurance policy that takes effect prior to taking any medication or commencing treatment

to further embryo transfer that covers preconception care, prenatal care, major medical treatments, hospitalization, and behavioral health care, and the comprehensive **health insurance** policy has a term that extends throughout the duration of the expected pregnancy and for twelve months after the birth of the child, a stillbirth, a miscarriage resulting in termination of pregnancy, or termination of the pregnancy; the policy shall be paid for, whether directly or through reimbursement or other means, by the intended parent or parents on behalf of the person acting as surrogate pursuant to the surrogacy agreement, except that a person acting as surrogate who is receiving no compensation may waive the right to have the intended parent or parents pay for the health insurance policy. The intended parent or parents shall also pay for or reimburse the person acting as surrogate for all co-payments, deductibles and any other out-of-pocket medical costs associated with preconception, pregnancy, childbirth, or postnatal care, that accrue through twelve months after the birth of the child, a stillbirth, a miscarriage, or termination of the pregnancy. A person acting as surrogate who is receiving no compensation may waive the right to have the intended parent or parents make such payments or reimbursements;

[~~(8) the surrogacy agreement must provide that the intended parent or parents shall procure and pay for a life insurance policy for the person acting as surrogate that takes effect prior to taking any medication or the commencement of medical procedures to further embryo transfer, provides a minimum benefit of seven hundred fifty thousand dollars or the maximum amount the person acting as surrogate qualifies for if less than seven hundred fifty thousand dollars, and has a term that extends throughout the duration of the expected pregnancy and for twelve months after the birth of the child, a stillbirth, a miscarriage resulting in termination of pregnancy, or termination of the pregnancy, with a beneficiary or beneficiaries of their choosing. The policy shall be paid for, whether directly or through reimbursement or other means, by the intended parent or parents on behalf of the person acting as surrogate pursuant to the surrogacy agreement, except that a person acting as surrogate who is receiving no compensation may waive the right to have the intended parent or parents pay for the life insurance policy~~]

(11) the person acting as surrogate has registered with the central assisted reproduction registry; and

[~~(9)~~] **(12)** the person acting as surrogate meets all other requirements deemed appropriate by the commissioner of health regarding the health of the prospective surrogate.

(b) The intended parent or parents shall be eligible to enter into an enforceable surrogacy agreement under this article if he, she or they have met the following requirements at the time the surrogacy agreement was executed:

(1) **at least one intended parent must provide their gametes to create the embryo that will be transferred to the person acting as surrogate, unless the intended parent or parents are unable to provide their gametes for medical reasons;**

(2) the intended parent or parents have met and have certified that they will continue to meet the residency requirements, including:

(i) at least one intended parent is a United States citizen or a lawful permanent resident**;** and [~~was a resident~~]

(ii) the intended parent or parents have been residents of New York state for at least six months **at the time the surrogacy agreement was executed; and**

(iii) the intended parent or parents will maintain New York state residency for the duration of the surrogate pregnancy and for at least one month following the birth of any children;

(3) the intended parent or parents have given informed medical and legal consent to enter into the surrogacy agreement after completing the informed medical and legal consent procedures pursuant to part ten of this article;

[~~(2)~~](4) the intended parent or parents [~~has~~] have been represented [~~throughout~~] from the initiation of and throughout the contractual process and the duration of the [~~contract and its execution~~] surrogacy agreement until all of the acts contemplated by the surrogacy agreement have been fulfilled by separate, independent legal counsel of his, her or their own choosing who is licensed to practice law in the state of New York; [~~and~~

~~(3) he or she is~~] (5) they are an adult person who is not in a spousal relationship, or [~~adult~~] any adults who are spouses together, or any two adults who are intimate partners together, except an adult in a spousal relationship is eligible to enter into an enforceable surrogacy agreement without [~~his or her~~] their spouse if:

(i) they are living separate and apart pursuant to a decree or judgment of separation or pursuant to a written agreement of separation subscribed by the parties thereto and acknowledged or proved in the form required to entitle a deed to be recorded; or

(ii) they have been living separate and apart for at least three years prior to execution of the surrogacy agreement;

(6) the intended parent or parents were not parties to another surrogacy agreement at the time the surrogacy agreement pursuant to part four of this article was executed and they will not enter into another surrogacy agreement until after all of the acts contemplated by the current surrogacy agreement have been fulfilled; and

(7) the intended parent or parents have registered with the central assisted reproduction registry.

(c) [~~where~~] Where the spouse of an intended parent is not a required party to the agreement, the spouse is not an intended parent and shall not have rights or obligations to the child.

§ 10. Section 581-403 of the family court act, as added by section 1 of part L of chapter 56 of the laws of 2020, is amended to read as follows:

§ 581-403. Requirements of surrogacy agreement. A surrogacy agreement shall be deemed to have satisfied the requirements of this article and be enforceable if it meets the following requirements:

(a) it shall be in a [~~signed~~] record [~~verified or executed before~~] with each signature either notarized or witnessed by two [~~non-party witnesses~~] non-parties, whose names, phone numbers, email addresses, and mailing addresses shall be recorded, and signed by:

(1) each intended parent, and

(2) the person acting as surrogate, and the spouse of the person acting as surrogate, if [~~any~~] applicable, unless:

(i) [~~the person acting as surrogate and the spouse of the person acting as surrogate~~] they are living separate and apart pursuant to a decree or judgment of separation or pursuant to a written agreement of separation subscribed by the parties thereto and acknowledged or proved in the form required to entitle a deed to be recorded; or

(ii) they have been living separate and apart for at least three years prior to execution of the surrogacy agreement;

(b) it shall be executed prior to the person acting as surrogate taking any medication or the commencement of medical procedures in the furtherance of embryo transfer, [~~provided~~] and after the person acting as surrogate [~~shall have~~] has provided informed medical and legal consent pursuant to part ten of this article to [~~undergo such medical treatment or medical procedures prior to executing the~~] enter into the surrogacy agreement;

(c) it shall be executed by a person acting as surrogate [~~meeting~~] who met the eligibility requirements of subdivision (a) of section 581-402 of this part and by the spouse of the person acting as surrogate, if applicable, unless the signature of the spouse of the person acting as surrogate is not required as set forth in this section;

(d) it shall be executed by an intended parent or parents who met the eligibility requirements of subdivision (b) of section 581-402 of this part;

(e) the person acting as surrogate and the spouse of the person acting as surrogate, if applicable, and the intended parent or parents shall have been represented from the initiation of and throughout the contractual process and the surrogacy agreement stipulates that they will continue to be represented throughout the duration of the [~~contract and its execution~~] surrogacy agreement until all of the acts contemplated by the surrogacy agreement have been fulfilled by separate, independent legal counsel of their own choosing, who is licensed to practice law in the state of New York, to be paid for by the intended parent or parents;

(f) if the surrogacy agreement provides for the payment of compensation to the person acting as surrogate, the funds for base compensation and reasonable anticipated additional expenses shall have been placed in escrow with an independent escrow agent, who consents to the jurisdiction of New York courts for all proceedings related to the enforcement of the escrow agreement, prior to the person acting as surrogate commencing [~~with~~] any medical procedure other than medical evaluations necessary to determine the person acting as surrogate's eligibility;

(g) the person acting as surrogate has or the surrogacy agreement stipulates that the person acting as surrogate has or will obtain a comprehensive health insurance policy or shall obtain such policy once the surrogacy agreement is executed pursuant to section fourteen hundred nine of the general business law, which shall take effect prior to taking any medication or commencing treatment to further embryo transfer that covers preconception care, prenatal care, major medical treatments, hospitalization, and behavioral health care, and the comprehensive policy has a term that extends throughout the duration of the expected pregnancy and for twelve months after the birth of the child, a stillbirth, a miscarriage resulting in termination of pregnancy, or termination of the pregnancy; the policy shall be paid for, whether directly or through reimbursement or other means, by the intended parent or parents on behalf of the person acting as surrogate pursuant to the surrogacy agreement, except that a person acting as surrogate who is receiving no compensation may waive the right to have the intended parent or parents pay for the health insurance policy. The intended parent or parents shall also pay for or reimburse the person acting as surrogate for all co-payments, deductibles and any other out-of-pocket medical costs associated with preconception, pregnancy, childbirth, or postnatal care, that accrue through twelve months after the birth of the child, a stillbirth, a miscarriage, or termination of the pregnancy. A person acting as surrogate who is receiving no compensation may waive the right to

have the intended parent or parents make such payments or reimbursements;

(h) the surrogacy agreement must include information disclosing how the intended parent or parents will cover the medical expenses of the person acting as surrogate and the child. [~~If comprehensive health care coverage is used to cover the medical expenses, the~~] The disclosure shall include a review and summary of the comprehensive health care policy provisions related to coverage and exclusions for the person acting as surrogate's pregnancy and if an intended parent's or parents' health insurance coverage of in vitro fertilization shall be used to cover medical costs of assisted reproduction services rendered to the person acting as surrogate pursuant to section three thousand two hundred twenty-one or four thousand three hundred three of the insurance law; and

[~~(h)~~] (i) it shall include the following information:

(1) the date, city and state where the surrogacy agreement was executed;

(2) the first and last names of and contact information for the intended parent or parents and of the person acting as surrogate;

(3) prior to the effective date of section fourteen hundred five of the general business law, the first and last names of and contact information for the persons from which the gametes originated, if [~~known~~] identified, or the gamete donor reference number if the donation was nonidentified. After the effective date of section fourteen hundred five of the general business law the first and last name and contact information for any gamete donor must be included. The agreement shall specify whether the gametes provided were eggs, sperm, or embryos;

(4) the name of and contact information for the licensed and registered surrogacy program handling the surrogacy agreement, the independent escrow agent, and the fertility clinic; and

(5) the name of and contact information for the attorney representing the person acting as surrogate, and the spouse of the person acting as surrogate, if applicable, and the attorney representing the intended parent or parents; and

[~~(i)~~] (j) the surrogacy agreement must comply with all of the following terms:

(1) As to the person acting as surrogate and the spouse of the person acting as surrogate, if applicable:

(i) the person acting as surrogate agrees to undergo embryo transfer and attempt to carry and give birth to the child;

(ii) the person acting as surrogate and the spouse of the person acting as surrogate, if applicable, agree to surrender custody of all resulting children to the intended parent or parents immediately upon birth;

(iii) the surrogacy agreement shall include the name of and contact information for the attorney representing the person acting as surrogate and, if applicable, the spouse of the person acting as surrogate;

(iv) the surrogacy agreement must include an acknowledgement by the person acting as surrogate and the spouse of the person acting as surrogate, if applicable, that they have received a copy of the Surrogate's Bill of Rights and the bill of rights of donor-conceived and surrogate-born individuals from their legal counsel including an explanation of each right and how to implement their rights pursuant to part ten of this article;

(v) the surrogacy agreement must permit the person acting as surrogate to make all health [~~and~~], welfare, and behavioral decisions regarding

themselves and their pregnancy [~~including~~]. Health and welfare decisions include but are not limited to, whether to get vaccinated against the Coronavirus and other illnesses, to consent to a cesarean section or multiple embryo transfer, and notwithstanding any other provisions in this chapter, provisions in the agreement to the contrary are void and unenforceable. This article does not diminish the right of the person acting as surrogate to terminate or continue a pregnancy. The surrogacy agreement may not include clauses or terms that impose restrictions on the behavior of the person acting as surrogate. Any such clause or term is void and unenforceable;

(vi) the surrogacy agreement shall require the person acting as surrogate to receive surrogate screening, assisted reproduction, maternity health care and delivery, and behavioral health care services from health care providers licensed under title eight of the education law;

(vii) the surrogacy agreement shall permit the person acting as a surrogate to utilize the services of a health care practitioner licensed under title eight of the education law of the person's choosing;

[~~(vii)~~] (viii) the surrogacy agreement shall not limit the right of the person acting as surrogate to terminate or continue the pregnancy or reduce or retain the number of fetuses or embryos the person is carrying;

[~~(viii)~~] (ix) the surrogacy agreement shall provide for [~~the right of~~] the person acting as surrogate [~~, upon request,~~] to obtain a comprehensive health insurance policy that covers behavioral health care and will cover the cost of psychological counseling to address issues resulting from the person's participation in the surrogacy agreement, including, but not limited to, counseling following delivery[~~. The cost of that counseling~~], and such policy shall be paid for by the intended parent or parents;

[~~(ix)~~] (x) the surrogacy agreement must include a notice that any compensation received pursuant to the agreement is taxable and may affect the eligibility of the person acting as [~~surrogate's ability~~] surrogate and the person acting as surrogate's spouse, if applicable, for public benefits or the amount of such benefits; [~~and~~

~~(x)~~] (xi) the surrogacy agreement must provide that the intended parent or parents shall procure and pay for a life insurance policy for the person acting as surrogate that takes effect prior to taking any medication or the commencement of medical and surgical procedures to further embryo transfer, provides a minimum benefit of seven hundred fifty thousand dollars or the maximum amount the person acting as surrogate qualifies for if less than seven hundred fifty thousand dollars, and has a term that extends throughout the duration of the expected pregnancy and for twelve months after the birth of the child, a stillbirth, a miscarriage resulting in termination of pregnancy, or termination of the pregnancy, with a beneficiary or beneficiaries of their choosing. The policy shall be paid for, whether directly or through reimbursement or other means, by the intended parent or parents on behalf of the person acting as surrogate pursuant to the surrogacy agreement, except that a person acting as surrogate who is receiving no compensation may waive the right to have the intended parent or parents pay for the life insurance policy;

(xii) the surrogacy agreement shall provide that[~~, upon the person acting as surrogate's request,~~] the intended parent or parents [~~have or will procure and~~] shall procure and pay for a disability insurance policy for the person acting as surrogate[~~; the person acting as surrogate may designate the beneficiary of the person's choosing~~] before the

person acting as surrogate starts taking medication or commences medical and surgical procedures to further embryo transfer; and

(xiii) the surrogacy agreement may not include a nondisclosure clause that prohibits the person acting as surrogate from talking about the surrogacy agreement, the surrogate pregnancy, or their experience acting as a surrogate. Any such clause shall be void and unenforceable.

(2) As to the intended parent or parents:

(i) the intended parent or parents agree to accept custody of all resulting children immediately upon birth regardless of number, gender, or mental or physical condition and regardless of whether the intended embryos were transferred due to a laboratory error without diminishing the rights, if any, of anyone claiming to have a superior parental interest in the child; and

(ii) the intended parent or parents agree to assume responsibility for the support of all resulting children immediately upon birth; and

(iii) the surrogacy agreement shall include the name of and contact information for the attorney representing the intended parent or parents; and

(iv) the surrogacy agreement shall provide that the rights and obligations of the intended parent or parents under the surrogacy agreement are not assignable; and

(v) the intended parent or parents agree to execute a will, prior to the embryo transfer, designating a guardian for all resulting children and authorizing their executor to perform the intended parent's or parents' obligations pursuant to the surrogacy agreement.

§ 11. Section 581-408 of the family court act, as added by section 1 of part L of chapter 56 of the laws of 2020, is amended to read as follows:

§ 581-408. Absence of surrogacy agreement. Where there is no surrogacy agreement, the parentage of the child will be determined based on other laws of this state, taking into account the best interests of the child.

§ 12. Section 581-409 of the family court act, as added by section 1 of part L of chapter 56 of the laws of 2020, is amended to read as follows:

§ 581-409. Dispute as to surrogacy agreement. (a) Any dispute which is related to a surrogacy agreement other than disputes as to parentage, shall be resolved by the supreme court, which shall determine the respective rights and obligations of the parties[~~, in~~]. In any proceeding initiated pursuant to this section, the court may, at its discretion, authorize the use of conferencing or mediation at any point in the proceedings.

(b) Any disputes as to parentage shall be resolved taking into account the best interests of the child.

(c) Except as expressly provided in the surrogacy agreement, the intended parent or parents and the person acting as surrogate shall be entitled to all remedies available at law or equity in any dispute related to the surrogacy agreement.

[~~(c)~~] (d) There shall be no specific performance remedy available for a breach.

(e) In any proceeding initiated pursuant to this section, where the supreme court determines that the dispute involves both contractual and parentage issues, the court may order that the portion of the proceeding raising parentage issues may be transferred to the family or surrogate's court.

§ 13. Subdivision (c) of section 581-502 of the family court act, as added by section 1 of part L of chapter 56 of the laws of 2020, is amended to read as follows:

(c) Compensation may not be conditioned upon the **number of oocytes retrieved,** purported quality or genome-related traits of the gametes or embryos.

§ 14. Section 581-601 of the family court act, as added by section 1 of part L of chapter 56 of the laws of 2020, is amended to read as follows:

§ 581-601. Applicability. The rights enumerated in this part shall apply to any person acting as surrogate [~~in this state~~] **under part four of this article**, notwithstanding any surrogacy agreement, judgment of parentage, memorandum of understanding, verbal agreement or contract to the contrary. Except as otherwise provided by law, any written or verbal agreement purporting to waive or limit any of the rights in this part is void as against public policy. The rights enumerated in this part are not exclusive, and are in addition to any other rights provided by law, regulation, or a surrogacy agreement that meets the requirements of this article.

§ 15. Section 581-602 of the family court act, as added by section 1 of part L of chapter 56 of the laws of 2020, is amended to read as follows:

§ 581-602. Health [~~and~~]**,** welfare**, and behavioral** decisions. A person acting as surrogate has the **same** right to make all health [~~and~~]**,** welfare**, and behavioral** decisions regarding [~~them-self~~] **themself** and their pregnancy, including but not limited to whether to **get vaccinated against the Coronavirus and other illnesses, to** consent to a cesarean section or multiple embryo transfer, to utilize the services of a health care practitioner **licensed under title eight of the education law** of their choosing, whether to terminate or continue the pregnancy, and whether to reduce or retain the number of fetuses or embryos they are carrying. **A person acting as surrogate has the same right to make all behavioral decisions regarding themself and their pregnancy as other pregnant people in New York state. Any provisions that restrict the behavior of a person acting as surrogate in a surrogacy agreement under part four of this article are void and unenforceable.**

§ 16. Section 581-603 of the family court act, as added by section 1 of part L of chapter 56 of the laws of 2020, is amended to read as follows:

§ 581-603. Independent legal counsel. A person acting as surrogate**,** has the right to be represented **from the initiation of and** throughout the contractual process and the duration of the surrogacy agreement [~~and its execution~~]**, until all of the acts contemplated by the surrogacy agreement have been fulfilled** by **separate,** independent legal counsel of their own choosing who is licensed to practice law in the state of New York, to be paid for by the intended parent or parents.

§ 17. Section 581-604 of the family court act, as added by section 1 of part L of chapter 56 of the laws of 2020, is amended to read as follows:

§ 581-604. Health insurance and medical costs. A person acting as surrogate has the right to have a comprehensive health insurance policy that covers preconception care, prenatal care, major medical treatments, hospitalization and behavioral health care for a term [~~that extends~~] **beginning before the person acting as surrogate takes any medication or commences medical procedures to further embryo transfer and extending** throughout the duration of the expected pregnancy and for twelve months

after the birth of the child, a stillbirth, a miscarriage resulting in termination of pregnancy, or termination of the pregnancy, to be paid for by the intended parent or parents. The intended parent or parents shall also pay for or reimburse the person acting as surrogate for all co-payments, deductibles and any other out-of-pocket medical costs associated with pregnancy, childbirth, or postnatal care that accrue through twelve months after the birth of the child, a stillbirth, a miscarriage, or the termination of the pregnancy. A person acting as a surrogate who is receiving no compensation may waive the right to have the intended parent or parents make such payments or reimbursements.

§ 18. Section 581-605 of the family court act, as added by section 1 of part L of chapter 56 of the laws of 2020, is amended to read as follows:

§ 581-605. Counseling. A person acting as surrogate has the right to [~~obtain~~] have a comprehensive health insurance policy that covers behavioral health care and will cover the cost of psychological counseling to address issues resulting from their participation in a surrogacy agreement and such policy shall be paid for by the intended parent or parents.

§ 19. Section 581-607 of the family court act is renumbered section 581-608 and a new section 581-607 is added to read as follows:

§ 581-607. Disability insurance policy. A person acting as surrogate has the right to be provided a disability insurance policy prior to taking any medication or commencement of medical and surgical procedures to further embryo transfer, which shall be paid for by the intended parent or parents.

§ 20. Article 5-C of the family court act is amended by adding four new parts 8, 9, 10 and 11 to read as follows:

PART 8

GAMETE DONATION MATCHED AGREEMENT AND GAMETE DONATION AGENCY AGREEMENT

Section 581-801. Applicability.
581-802. Gamete donation matched agreement or gamete donation agency agreement authorized.
581-803. Eligibility to enter into a gamete donation matched agreement or a gamete donation agency agreement.
581-804. Requirements of a gamete donation matched agreement or a gamete donation agency agreement.
581-805. Gamete donation matched agreement or gamete donation agency agreement; effect of subsequent spousal relationship.
581-806. Termination of a gamete donation matched agreement or a gamete donation agency agreement.
581-807. Parentage under a compliant gamete donation matched agreement or a compliant gamete donation agency agreement.
581-808. Dispute as to a gamete donation matched agreement or a gamete donation agency agreement.

§ 581-801. Applicability. The provisions enumerated in this part shall apply to:

(a) a gamete donation matched agreement between a gamete donor and an intended parent or parents. The gamete donor and/or the intended parent or parents is located in or is a resident of New York state; and

(b) a gamete donation agency agreement between:

(1) a gamete donor located in, or who is a resident of New York state; or

(2) an intended parent or parents located in, or who are residents of New York state that receive fresh or frozen gametes; and

(3) an agent, gamete agency, gamete broker, surrogacy program, fertility clinic, or health care provider, hereinafter referred to in this part as an "entity".

§ 581-802. Gamete donation matched agreement or gamete donation agency agreement authorized. If eligible under this article to enter into a gamete donation matched agreement or a gamete donation agency agreement:

(a) a gamete donor and an intended parent or parents may enter into a gamete donation matched agreement which will be enforceable provided the gamete donation matched agreement meets the requirements of this article;

(b) a gamete donor or an intended parent or parents may enter into a gamete donation agency agreement with an entity which will be enforceable provided the gamete donation agency agreement meets the requirements of this article.

§ 581-803. Eligibility to enter into a gamete donation matched agreement or a gamete donation agency agreement. (a) An egg donor shall be eligible to enter into an enforceable gamete donation matched agreement or a gamete donation agency agreement under this article if the egg donor has met all of the following requirements at the time the agreement is executed:

(1) the egg donor must be at least twenty-one years of age and no more than thirty years of age, unless the entity requires a maximum age that is less than thirty;

(2) the egg donor may only enter into a gamete donation matched agreement or a gamete donation agency agreement where the entity that collects the donor's gametes and provides matching services, if applicable, is licensed and registered by New York state;

(3) fewer than ten donor-conceived individuals that were conceived using the donor gametes of the egg donor have been born in New York state, provided that this number shall not include the egg donor's own biological children;

(4) the egg donor has given informed medical and legal consent to enter into the gamete donation matched agreement or the gamete donation agency agreement after completing the informed medical and legal consent procedures pursuant to part ten of this article;

(5) the egg donor has obtained written medical clearance to undergo ovarian stimulation and oocyte retrieval after completing a medical evaluation and psychological screening with independent health care practitioners licensed under title eight of the education law relating to the anticipated gamete donation. The department shall maintain a list of independent health care providers;

(6) the egg donor shall not obtain written medical clearance to undergo ovarian stimulation and oocyte retrieval if they have any medical conditions indicated by the American college of obstetricians and gynecologists (ACOG) that place individuals at risk of ovarian hyperstimulation, if they have any relevant communicable disease agents and diseases specified by the U.S. food and drug administration, or if they are not eligible to donate gametes pursuant to regulations of the department of health as set forth in 10 NYCRR 52-8.5 and 52-3.4;

(7) the egg donor is not eligible to enter into a gamete donation matched agreement or a gamete donation agency agreement if the egg donor has previously undergone ovarian stimulation six times or more, including for purposes of egg freezing, or if the egg donor has experienced

ovarian hyperstimulation syndrome (OHSS), polycystic ovarian syndrome (PCOS), or endometriosis;

(8) if an egg donor is entering into a gamete donation matched agreement or a gamete donation agency agreement prior to the effective date of section fourteen hundred five of the general business law, the egg donor was counseled on their options regarding identity disclosure under section fourteen hundred seven of the general business law and has certified in a signed record whether they agree to donate gametes as an identified or nonidentified gamete donor after completing the informed medical and legal consent procedures pursuant to part ten of this article. If an egg donor is entering into a gamete donation matched agreement or a gamete donation agency agreement after the effective date of section fourteen hundred five of the general business law, the egg donor was counseled on their options regarding identity disclosure under section fourteen hundred seven of the general business law and has certified in a signed record that they agree to donate gametes as an identified gamete donor after completing the informed medical and legal consent procedures pursuant to part ten of this article; and

(9) the egg donor has registered with the central assisted reproduction registry.

(b) A sperm donor shall be eligible to enter into an enforceable gamete donation matched agreement or a gamete donation agency agreement under this article if the sperm donor has met all of the following requirements at the time the agreement is executed:

(1) a sperm donor must be at least twenty-one years of age, and no more than forty years of age, unless the entity requires a maximum age that is less than forty years of age;

(2) a sperm donor may only enter into a gamete donation matched agreement or a gamete donation agency agreement where the entity that collects the donor's gametes and provides matching services, if applicable, is licensed and registered by New York state;

(3) fewer than ten donor-conceived individuals that were conceived using the donor gametes of the sperm donor have been born in New York state, provided that this number shall not include a sperm donor's own biological children;

(4) a sperm donor provided informed medical and legal consent to enter into the gamete donation matched agreement or the gamete donation agency agreement after completing the informed medical and legal consent procedures pursuant to part ten of this article;

(5) a sperm donor has obtained written medical clearance to produce their gametes for use in assisted reproduction after completing a medical evaluation and a psychological screening with independent health care practitioners licensed under title eight of the education law relating to the anticipated gamete donation. The department shall maintain a list of independent health care providers;

(6) a sperm donor shall not obtain written medical clearance if the sperm donor has any relevant communicable disease agents and diseases specified by the U.S. food and drug administration, or if they are not eligible pursuant to regulations of the department of health as set forth in 10 NYCRR 52-8.5 and 52-3.4;

(7) if a sperm donor is entering into a gamete donation matched agreement or a gamete donation agency agreement prior to the effective date of section fourteen hundred five of the general business law, the sperm donor was counseled on their options regarding identity disclosure under section fourteen hundred seven of the general business law and has certified in a signed record whether they agree to donate gametes as an

identified or nonidentified gamete donor after completing the informed medical and legal consent procedures pursuant to part ten of this article. If a sperm donor is entering into a gamete donation matched agreement or a gamete donation agency agreement after the effective date of section fourteen hundred five of the general business law, the sperm donor was counseled on their options regarding identity disclosure under section fourteen hundred seven of the general business law and has certified in a signed record that they agree to donate gametes as an identified gamete donor after completing the informed medical and legal consent procedures pursuant to part ten of this article; and

(8) the sperm donor registered with the central assisted reproduction registry.

(c) An intended parent or parents shall be eligible to enter into an enforceable gamete donation matched agreement or gamete donation agency agreement if the intended parent or parents have met all of the following requirements at the time the agreement is executed:

(1) the intended parent or parents have given informed medical and legal consent to enter into the gamete donation matched agreement or the gamete donation agency agreement after completing the informed medical and legal consent procedures pursuant to part ten of this article;

(2) an intended parent or parents may only enter into a gamete donation matched agreement or a gamete donation agency agreement where the entity that collects the donor's gametes and provides matching services, if applicable, is licensed and registered by New York state;

(3) if an intended parent or parents are entering into a gamete donation matched agreement or a gamete donation agency agreement prior to the effective date of section fourteen hundred five of the general business law, the intended parent or parents were counseled on the options regarding identity disclosure of gamete donors and information that a donor-conceived person, or the parent or legal guardian, has the right to obtain upon request under section fourteen hundred seven of the general business law. If an intended parent or parents are entering into a gamete donation matched agreement or a gamete donation agency agreement after the the effective date of section fourteen hundred five of the general business law, the intended parent or parents were counseled that nonidentified donation is not permitted and on the information that donor-conceived individuals, or the parent or legal guardian, has the right to obtain upon request under section fourteen hundred seven of the general business law.

§ 581-804. Requirements of a gamete donation matched agreement or a gamete donation agency agreement. A gamete donation matched agreement or a gamete donation agency agreement shall be deemed to have satisfied the requirements of this article and be enforceable if it meets all of the following requirements:

(a) It shall be in a record signed by the gamete donor and each intended parent, if applicable:

(1) before a notary public; or

(2) before two witnesses who are not parties to the agreement; provided that if the record is signed before two witnesses who are not the intended parents, the name, phone number, email address, and mailing address of each witness must be recorded.

(b) It shall be executed by a gamete donor who met the eligibility requirements of subdivision (a) or (b) of section 581-803 of this part;

(c) It shall be executed by an intended parent or parents, if applicable, who met the eligibility requirements of subdivision (c) of section 581-803 of this part.

(d) The gamete donor was provided the option to consult with an independent legal counsel of their own choosing who is licensed to practice in the state of New York, to be paid for by the entity. If the gamete donor opted to consult with legal counsel, they have had the consultation prior to executing the gamete donation matched agreement or the gamete donation agency agreement.

(e) If an egg donor is entering into a gamete donation matched agreement or a gamete donation agency agreement, the agreement shall be executed prior to the egg donor taking any medication or commencement of medical procedures in the furtherance of ovarian stimulation and oocyte retrieval.

(f) It shall include the following information:

(1) the date, city, and state where the gamete donation matched agreement or the gamete donation agency agreement was executed;

(2) the first and last name of and contact information for the gamete donor, and whether the gametes provided are eggs, sperm, or embryos;

(3) the first and last name of and contact information for the intended parent or parents if applicable;

(4) the name of and contact information for the entity that provided matching services, if applicable, and collected the donor gametes; and

(5) the amount of compensation that the gamete donor shall receive for their time and effort to produce eggs or sperm.

(g) The gamete donation matched agreement or the gamete donation agency agreement must comply with all of the following terms:

(1) As to the egg donor, if applicable:

(i) the gamete donation matched agreement or the gamete donation agency agreement must include signed certification by the egg donor that they have completed the informed medical and legal consent procedures pursuant to part ten of this article and have provided informed medical and legal consent to enter into the gamete donation matched agreement or gamete donation agency agreement;

(ii) the gamete donation matched agreement or the gamete donation agency agreement must include signed certification indicating whether the egg donor authorizes use of the eggs they are donating, or embryos created from the donated eggs, for research at any time;

(iii) the gamete donation matched agreement or gamete donation agency agreement must include signed certification indicating whether the egg donor authorizes distribution of the eggs they are donating, or embryos created from the donated eggs, to multiple intended parents in different households;

(iv) the egg donor agrees to undergo ovarian stimulation and oocyte retrieval and attempt to produce eggs for use in assisted reproduction, subject to their right to cancel an egg retrieval cycle or terminate the gamete donation matched agreement or gamete donation agency agreement at any time;

(v) the egg donor has certified that they have no parental or proprietary interest in the eggs provided under the gamete donation matched agreement or gamete donation agency agreement;

(vi) the gamete donation matched agreement or gamete donation agency agreement must provide for the right of the egg donor to exercise sole discretion over decisions regarding their behavior, other than behaviors that would harm their health, and to make all decisions regarding their health and welfare, including the amount of time that transpires between egg retrieval cycles and gamete donation matched agreements or gamete donation agency agreements and whether to cancel an egg retrieval cycle

or terminate a gamete donation matched agreement or gamete donation agency agreement at any time;

(vii) the gamete donation matched agreement or gamete donation agency agreement must provide that the entity or the intended parent or parents, if applicable, shall pay for a health insurance policy that covers major medical treatment, hospitalization, and behavioral health care for the egg donor, and the health insurance policy has a term that begins before the egg donor starts taking any medication or commencement of medical and surgical procedures in furtherance of ovarian stimulation and oocyte retrieval and extends for twelve months after oocyte retrieval is completed. If the egg donor does not have such a health insurance policy, one may be purchased pursuant to section three hundred sixty-five-p of the social services law once the gamete donation matched agreement or the gamete donation agency agreement has been executed. The entity or the intended parent or parents shall also pay for or reimburse the egg donor for all co-payments, deductibles and any other out-of-pocket medical costs associated with ovarian stimulation, oocyte retrieval, and medical or psychological complications that accrue through twelve months after oocyte retrieval is completed;

(viii) the gamete donation matched agreement or gamete donation agency agreement shall provide for the egg donor to obtain a health insurance policy that covers major medical treatment, hospitalization, and behavioral health care and will cover the cost of psychological counseling to address issues resulting from the donor's participation in the gamete donation matched agreement or gamete donation agency agreement, including, but not limited to, counseling following the gamete donation. The policy shall be paid for by the entity or the intended parent or parents, if applicable;

(ix) the gamete donation matched agreement or gamete donation agency agreement may not include more than one cycle of oocyte retrieval, and may not require the egg donor to sign another gamete donation matched agreement or gamete donation agency agreement until a minimum of three months has passed following fulfillment of the current agreement;

(x) the egg donor has been shown the entity's compensation list for gamete donation that is made available to the general public;

(xi) if an egg donor is entering into a gamete donation matched agreement or a gamete donation agency agreement prior to the effective date of section fourteen hundred five of the general business law, the agreement must include the egg donor's signed certification that they agree to provide donor gametes on an identified or nonidentified basis. If an egg donor is entering into a gamete donation matched agreement or gamete donation agency agreement after the effective date of section fourteen hundred five of the general business law, the agreement must include the egg donor's signed certification that they agree to identified donation; and

(xii) donor screening, ovarian stimulation, oocyte retrieval, and other medical services that are received pursuant to the gamete donor matched agreement or the gamete donor agency agreement must be provided by health care providers licensed under title eight of the education law.

(2) As to the sperm donor, if applicable:

(i) the gamete donation matched agreement or gamete donation agency agreement must include signed certification by the sperm donor that they have completed the informed medical and legal consent procedures pursuant to part ten of this article and have provided informed medical and

legal consent to enter into the gamete donation matched agreement or gamete donation agency agreement;

(ii) the sperm donor agrees to attempt to produce sperm for use in assisted reproduction, subject to their right to stop donating sperm and to terminate the gamete donation matched agreement or gamete donation agency agreement at any time;

(iii) the sperm donor has certified that they have no parental or proprietary interest in the sperm provided under the gamete donation matched agreement or gamete donation agency agreement;

(iv) the gamete donation matched agreement or gamete donation agency agreement must permit the sperm donor to make all health and welfare decisions regarding themself, including whether to stop donating sperm and to terminate a gamete donation matched agreement or a gamete donation agency agreement at any time;

(v) the sperm donor has been shown the entity's compensation list for gamete donation that is made available to the general public;

(vi) the gamete donation matched agreement or the gamete donation agency agreement must include signed certification indicating whether the sperm donor authorizes use of the sperm they are donating, or embryos created from the donated sperm, for research at any time;

(vii) if a sperm donor is entering into a gamete donation matched agreement or a gamete donation agency agreement prior to the effective date of section fourteen hundred five of the general business law, the agreement must include the sperm donor's signed certification that they agree to provide donor gametes on an identified or nonidentified basis. If a sperm donor is entering into a gamete donation matched agreement or gamete donation agency agreement after the effective date of section fourteen hundred five of the general business law, the agreement must include the sperm donor's signed certification that they agree to identified donation; and

(viii) donor screening and other medical services that are required under the gamete donor matched agreement or the gamete donor agency agreement must be provided by health care providers licensed under title eight of the education law.

(3) As to the intended parent or parents, if applicable:

(i) the gamete donation matched agreement or the gamete donation agency agreement must include certification by each intended parent that they have completed the informed medical and legal consent procedures pursuant to part ten of this article and have provided informed medical and legal consent to enter into the gamete donation matched agreement or the gamete donation agency agreement; and

(ii) the intended parent or parents agree to accept parental rights and responsibility of all resulting donor-conceived children, regardless of number, gender, or mental or physical condition without diminishing the rights, if any, of anyone claiming to have a superior parental interest in the child.

§ 581-805. Gamete donation matched agreement or gamete donation agency agreement; effect of subsequent spousal relationship. After the execution of a gamete donation matched agreement or a gamete donation agency agreement under this article, the subsequent separation or divorce of the intended parents does not affect the rights, duties and responsibilities of the intended parents as outlined in the gamete donation matched agreement or gamete donation agency agreement.

§ 581-806. Termination of a gamete donation matched agreement or a gamete donation agency agreement. (a) Right to terminate. A gamete donor has the right to terminate a gamete donation matched agreement or

a gamete donation agency agreement at any time, and an egg donor has the right to cancel an egg retrieval cycle at any time.

(b) Termination of a gamete donation matched agreement. (1) An egg donor or the intended parent or parents may terminate a gamete donation matched agreement without penalty and without being required to reimburse donor screening costs after the agreement has been executed and before the egg donor has started taking medication or commenced medical procedures to further ovarian stimulation and oocyte retrieval.

(2) An egg donor may terminate the gamete donation matched agreement at any time without penalty and without being required to reimburse donor screening, medication, or medical procedure costs due to changing their mind about donating their gametes, provided that if the egg donor terminates the gamete donation matched agreement after they have started taking medication or commenced medical procedures to further ovarian stimulation and oocyte retrieval, the egg donor is required to return any financial compensation received. The egg donor shall retain the health insurance policy obtained under the terms of the agreement.

(3) An egg donor may terminate the gamete donation matched agreement at any time without penalty and without being required to reimburse donor screening, medication, or medical procedure costs due to experiencing medical complications verified by an independent health care provider licensed under title eight of the education law of the egg donor's choosing, provided that if the egg donor terminates the gamete donation matched agreement after they have started taking medication or commenced medical procedures to further ovarian stimulation and oocyte retrieval, the egg donor shall receive prorated compensation for their time and effort and shall retain the health insurance policy obtained under the terms of the agreement.

(4) If the physician cancels the egg retrieval cycle or terminates the gamete donation matched agreement after the egg donor has started taking medication or commenced medical procedures to further ovarian stimulation and oocyte retrieval, the egg donor shall receive prorated compensation for their time and effort, which shall be paid for by the entity, and the egg donor shall retain the health insurance policy obtained under the terms of the agreement.

(5) If the intended parent or parents cancel the egg retrieval cycle or terminate the gamete donation matched agreement after the egg donor has started taking medication or commenced medical procedures to further ovarian stimulation and oocyte retrieval, the egg donor shall receive prorated compensation for their time and effort, which shall be paid for by the intended parent or parents, and shall retain the health insurance policy obtained under the terms of the agreement.

(6) A sperm donor may stop donating sperm and may terminate a gamete donation matched agreement at any time without penalty and without being required to reimburse donor screening costs.

(c) Termination of a gamete donation agency agreement between a gamete donor and an entity. (1) An egg donor may terminate a gamete donation agency agreement without penalty and without being required to reimburse donor screening costs after the agreement has been executed and before the egg donor has started taking medication or commenced medical procedures to further ovarian stimulation and oocyte retrieval.

(2) An egg donor may terminate the gamete donation agency agreement at any time without penalty and without being required to reimburse donor screening, medication, or medical procedure costs due to changing their mind about donating their gametes, provided that if the egg donor terminates the gamete donation agency agreement after they have started

taking medication or commenced medical procedures to further ovarian stimulation and oocyte retrieval, the egg donor is required to return any financial compensation received. The egg donor shall retain the health insurance policy obtained under the terms of the agreement.

(3) An egg donor may terminate the gamete donation agency agreement at any time without penalty and without being required to reimburse donor screening, medication, or medical procedure costs due to experiencing medical complications verified by an independent health care provider licensed under title eight of the education law of the egg donor's choosing, provided that if the egg donor terminates the gamete donation agency agreement after they have started taking medication or commenced medical procedures to further ovarian stimulation and oocyte retrieval, the egg donor shall receive a prorated compensation for their time and effort, and the egg donor shall retain the health insurance policy obtained under the terms of the agreement.

(4) If the physician cancels the egg retrieval cycle or terminates the gamete donation agency agreement after the egg donor has started taking medication or commenced medical procedures to further ovarian stimulation and oocyte retrieval, the egg donor shall receive prorated compensation for their time and effort, which shall be paid for by the entity, and the egg donor shall retain the health insurance policy obtained under the terms of the agreement.

(5) A sperm donor may stop donating sperm and may terminate a gamete donation agency agreement at any time without penalty and without being required to reimburse donor screening costs.

(d) Termination of a gamete donation agency agreement between an intended parent or parents and an entity, where the intended parent or parents are receiving fresh donor gametes. (1) If receiving fresh donor eggs, the intended parent or parents may terminate a gamete donation agency agreement without penalty and without being required to reimburse donor screening costs after the agreement has been executed and before the egg donor has started taking medication or commenced medical procedures to further ovarian stimulation and oocyte retrieval.

(2) If receiving fresh donor eggs and the physician cancels the egg retrieval cycle or terminates the gamete donation agency agreement, the intended parent or parents may not be required to reimburse donor screening costs or compensate the egg donor for time and effort.

(3) If receiving fresh donor eggs and the intended parent or parents terminate the gamete donation agency agreement after the egg donor has started taking medication or commenced medical procedures to further ovarian stimulation and oocyte retrieval, the intended parent or parents may not be required to reimburse donor screening costs. The egg donor shall receive prorated compensation for their time and effort, which shall be paid by the intended parent or parents; and

(4) If receiving fresh donor sperm, the intended parent or parents may terminate a gamete donation agency agreement without penalty and without being required to reimburse donor screening costs; and

(e) The amount of prorated compensation that an egg donor shall receive for their time and effort under subdivisions (b), (c), and (d) of this section shall be stipulated in regulations that shall be promulgated by the commissioner.

§ 581-807. Parentage under a compliant gamete donation matched agreement or a compliant gamete donation agency agreement. Upon the birth of a child conceived by assisted reproduction under a gamete donation matched agreement or a gamete donation agency agreement that complies with this part, each intended parent is, by operation of law, a parent

of the child and the gamete donor or donors are not a parent of the child.

§ 581-808. Dispute as to a gamete donation matched agreement or a gamete donation agency agreement. (a) Any dispute which is related to a gamete donation matched agreement or a gamete donation agency agreement shall be resolved by the supreme court of the state of New York, which shall determine the respective rights and obligations of the parties.

(b) Except as expressly provided in the gamete donation matched agreement, the intended parent or parents and the gamete donor shall be entitled to all remedies available at law or equity in any dispute related to the gamete donation matched agreement.

(c) There shall be no specific performance remedy available for a breach by the gamete donor of any gamete donation matched agreement or of any gamete donation agency agreement term.

PART 9
GAMETE DONOR'S BILL OF RIGHTS

Section 581-901. Applicability.
581-902. Medical records.
581-903. Health and welfare decisions.
581-904. Independent legal counsel.
581-905. Health insurance and medical costs.
581-906. Counseling.
581-907. Termination of a gamete donation matched agreement or a gamete donation agency agreement.

§ 581-901. Applicability. The rights enumerated in this part shall apply to any gamete donor located in, or who is a resident of New York state, receives compensation for time and effort to produce eggs or sperm collected by a New York state licensed gamete agency, gamete bank, or fertility clinic for use in assisted reproduction by an intended parent or parents who are unknown to the donor of the gametes at the time of donation, notwithstanding any gamete donation agreement, judgment of parentage, memorandum of understanding, verbal agreement or contract to the contrary. Except as otherwise provided by law, any written or verbal agreement purporting to waive or limit any of the rights in this part is void as against public policy. The rights enumerated in this part are not exclusive, and are in addition to any other rights provided by law, regulation, or a gamete donation matched agreement or gamete donation agency agreement that meets the requirements of this article.

§ 581-902. Medical records. (a) A gamete donor has the right to choose which medical records and health information they shall share with an intended parent or parents or with an agent, gamete agency, surrogacy program, gamete bank, fertility clinic, or health care provider that is providing matching services or collecting their gametes, other than the medical records and information they are required to share pursuant to 10 NYCRR Part 52.

(b) An egg donor has the right to obtain a copy of their medical and clinical records related to donor screening and to each egg retrieval cycle including:

(1) all test records including all laboratory and genetic test results;

(2) all X-ray or imaging procedure results including sonogram images and analysis;

(3) reports on egg and embryo quality; and

(4) the names of medications the egg donor has been prescribed and corresponding dosages.

(c) A sperm donor has the right to obtain a copy of their medical and clinical records related to donor screening and to each sperm donation including:

(1) all test records including all laboratory and genetic test results; and

(2) reports on sperm count and quality of all sperm samples.

§ 581-903. Health and welfare decisions. (a) An egg donor has the right to exercise sole discretion over decisions regarding their behavior, other than behaviors that would harm their health, and to make all health and welfare decisions regarding themselves, including but not limited to, the amount of time that transpires between commencing egg retrieval cycles, entering into gamete donation matched agreements or gamete donation agency agreements, and whether to cancel an egg retrieval cycle or terminate a gamete donation matched agreement or a gamete donation agency agreement at any time.

(b) A sperm donor has the right to exercise sole discretion over decisions regarding their behavior, other than behaviors that would harm their health, and to make all health and welfare decisions regarding themself, including the right to terminate the gamete donation matched agreement or the gamete donation agency agreement at any time.

(c) This article does not diminish the responsibility of health care providers to ensure adherence to standards of medical practice.

§ 581-904. Independent legal counsel. Prior to executing a gamete donation matched agreement or a gamete donation agency agreement, a gamete donor has the right to consult with independent legal counsel of their own choosing who is licensed to practice law in the state of New York, to be paid for by the agent, gamete agency, surrogacy program, gamete bank, fertility clinic, or health care provider. The department shall maintain a list of independent legal counselors.

§ 581-905. Health insurance and medical costs. An egg donor has the right to have a health insurance policy that covers major medical treatments, hospitalizations, and behavioral health care for a term that takes effect prior to the egg donor taking any medication and commencing medical procedures in furtherance of ovarian stimulation and oocyte retrieval and that extends for twelve months after oocyte retrieval is completed. Such policy shall be paid for by the agent, gamete agency, surrogacy program, gamete bank, fertility clinic, health care provider, or the intended parent or parents, if applicable, which shall also pay for or reimburse the egg donor for all co-payments, deductibles and any other out-of-pocket medical costs associated with ovarian stimulation, oocyte retrieval, and medical or psychological complications pursuant to the gamete donation matched agreement or the gamete donation agency agreement.

§ 581-906. Counseling. An egg donor has the right to have a health insurance policy that covers behavioral health care and will cover the cost of psychological counseling to address issues resulting from participation in the gamete donation matched agreement or the gamete donation agency agreement, including, but not limited to counseling following the gamete donation. Such policy shall be paid for by the agent, gamete agency, surrogacy program, gamete bank, fertility clinic, health care provider, or the intended parent or parents, if applicable.

§ 581-907. Termination of a gamete donation matched agreement or a gamete donation agency agreement. (a) An egg donor has the right to

terminate a gamete donation matched agreement or a gamete donation agency agreement at any time.

(b) A sperm donor has the right to stop donating gametes and to terminate a gamete donation matched agreement or a gamete donation agency agreement at any time. An egg donor has the right to cancel an egg retrieval cycle at any time.

PART 10
INFORMED CONSENT

Section 581-1001. Applicability.
581-1002. Uniform protocols for informed medical and legal consent.
581-1003. Informed medical and legal consent procedures for a potential egg donor.
581-1004. Informed medical and legal consent procedures for a potential sperm donor.
581-1005. Informed medical and legal consent procedures for a potential person acting as surrogate.
581-1006. Informed medical and legal consent procedures for an intended parent or parents.

§ 581-1001. Applicability. (a) The informed medical and legal consent procedures and requirements in this section shall be administered to:

(1) a potential gamete donor who intends to enter into a gamete donation matched agreement or gamete donation agency agreement under part eight of this article to receive compensation for time and effort to provide gametes for use in assisted reproduction by an intended parent who is unknown to the donor of the gametes at the time of donation;

(2) a potential person acting as surrogate who intends to enter into a surrogacy agreement under part four of this article; and

(3) an intended parent who intends to enter into a gamete donation matched agreement or a gamete donation agency agreement under part eight of this article or a surrogacy agreement under part four of this article.

(b) The informed medical and legal consent processes shall be administered and documented prior to the execution of a gamete donation matched agreement, or a surrogacy agreement.

§ 581-1002. Uniform protocols for informed medical and legal consent. Uniform protocols to administer informed medical and legal consent procedures are established, and shall be updated, to reflect research findings and current evidence-based best practices, to ensure that each potential gamete donor, potential person acting as surrogate, and intended parent is fully informed and able to voluntarily consent to agreement provisions without being coerced or incentivized.

(a) The department of health, in consultation with the task force on life and the law, shall develop video tutorials that provide information about how gamete donation and surrogacy work in New York state, which shall address applicable regulations, an overview of the informed medical and legal consent processes, required medical screenings, and an overview of the rights afforded to gamete donors, persons acting as surrogates, intended parents, and donor-conceived and surrogate-born individuals. The department shall make video tutorials available online and in DVD format. Video tutorials shall be updated as necessary to reflect current law, regulations, and medical best practices.

(b) The department of health, in consultation with the task force on life and the law, shall develop and maintain a checklist of information that must be reviewed with potential egg donors and requirements the potential egg donor must comply with before they provide informed medical and legal consent to enter into a gamete donation matched agreement or a gamete donation agency agreement, including:

(1) The potential egg donor shall be informed of the following medical information, which shall be provided in writing to the potential egg donor and reviewed verbally with the potential egg donor:

(i) the results of the potential egg donor's medical and psychological screenings and whether they have any health conditions that disqualify them from donating gametes or that would put them at greater risk of adverse health outcomes from undergoing ovarian stimulation and oocyte retrieval;

(ii) the medications and medical and surgical procedures associated with ovarian stimulation and oocyte retrieval and their potential risks or side effects; and

(iii) the known health risks to egg donors and donor-conceived persons, including disclosure that all health risks are not known due to lack of data.

(2) The potential egg donor shall attend a counseling session regarding issues related to gamete donation, including:

(i) potential psychological and emotional impacts on the potential egg donor, the egg donor's current or future children and partner, if applicable, and on any donor-conceived persons; and

(ii) best practices for talking with children and other family members about gamete donation.

(3) The potential egg donor shall be informed of the following legal information which shall be provided in writing to the potential egg donor and reviewed verbally with the potential egg donor:

(i) the rights an egg donor is afforded in the gamete donor's bill of rights pursuant to part nine of this article and how to implement each right, and rights that are afforded donor-conceived individuals in the bill of rights of donor-conceived and surrogate-born individuals pursuant to part eleven of this article;

(ii) that donated eggs, or embryos created from donated eggs, could be used for research at any time unless the egg donor does not authorize such use of their donor gametes. The egg donor must provide signed certification that indicates whether they authorize use of their donor gametes for research at any time;

(iii) that donated eggs, or embryos created from donated eggs, could be provided to intended parents from multiple households for use in assisted reproduction, unless the gamete donor does not authorize such distribution. The egg donor must provide signed certification that indicates whether they authorize such distribution of their gametes;

(iv) the list of gamete donation compensation for providing donor gametes pursuant to a gamete donation matched agreement or a gamete donation agency agreement;

(v) the maximum number of donor-conceived persons that may be born in New York state after the effective date of section fourteen hundred four of the general business law using the donor gametes provided by the potential egg donor, and the possibility that the gametes provided by the egg donor will be used for assisted reproduction to conceive a child that will be born outside of New York state, which cannot be tracked or regulated by New York state;

(vi) that compensation received pursuant to a gamete donation matched agreement or a gamete donation agency agreement is taxable and may affect the eligibility of the egg donor for public benefits or the amount of such benefits, including social security benefits;

(vii) the potential egg donor's options regarding identity disclosure under section fourteen hundred seven of the general business law;

(viii) information about the central assisted reproduction registry, including:

(A) the purpose of the registry;

(B) what personal and clinical data that is collected and how it is used;

(C) how collected personal information is secured and kept confidential;

(D) that a gamete donor is required to register before executing a gamete donation matched agreement or a gamete donation agency agreement;

(E) how the egg donor can voluntarily provide health information updates confidentially to the registry in the future; and

(F) the terms of the gamete donation matched agreement or the gamete donation agency agreement.

(c) The department of health, in consultation with the task force on life and the law, shall develop and maintain a checklist of information that must be reviewed with potential sperm donors and requirements the potential sperm donor must comply with before they provide informed medical and legal consent to enter into a gamete donation matched agreement or a gamete donation agency agreement, including:

(1) The potential sperm donor must be informed of the following medical information, which shall be provided in writing to the potential sperm donor and reviewed verbally with the potential sperm donor:

(i) the results of the potential sperm donor's medical and psychological screenings and whether they have any health conditions that disqualify them from donating gametes; and

(ii) the known health risks to donor-conceived persons, including disclosure that all health risks are not known due to lack of data.

(2) The potential sperm donor shall be provided written materials on counseling topics regarding issues related to gamete donation, including:

(i) the potential psychological and emotional impacts on the potential sperm donor, the sperm donor's current or future children and partner, if applicable, and any donor-conceived children; and

(ii) the best practices for talking with children and other family members about gamete donation.

(3) The potential sperm donor must be informed of the following legal information, which shall be provided in writing to the potential sperm donor and reviewed verbally with the potential sperm donor:

(i) the rights a sperm donor is afforded in the gamete donor's bill of rights pursuant to part nine of this article and how to implement each right, and rights that are afforded donor-conceived individuals pursuant to part eleven of this article;

(ii) the maximum number of donor-conceived persons that may be born in New York state using the donor gametes provided by the potential sperm donor after the effective date of section fourteen hundred eight of the general business law, and the possibility that the gametes provided by the sperm donor will be used for assisted reproduction to conceive a child that will be born outside of New York state, which cannot be tracked or regulated by New York state;

(iii) that donated sperm, or embryos created from donated sperm, could be used for research at any time unless the sperm donor does not authorize such use of their donor gametes. The sperm donor must provide signed certification that indicates whether they authorize use of their donor gametes for research at any time;

(iv) the list of gamete donation compensation schedule for providing donor gametes pursuant to a gamete donation matched agreement or a gamete donation agency agreement;

(v) that compensation received pursuant to a gamete donation matched agreement or a gamete donation agency agreement is taxable and may affect the eligibility of the sperm donor for public benefits or amount of such benefits, including social security benefits;

(vi) the potential sperm donor's options regarding identity disclosure under section fourteen hundred seven of the general business law;

(vii) information about the central assisted reproduction registry, including:

(A) the purpose of the registry;

(B) what personal and clinical data that is collected and how it is used;

(C) how collected personal information is secured and kept confidential;

(D) that donors are required to register before executing a gamete donation matched agreement or a gamete donation agency agreement; and

(E) how the sperm donor can voluntarily provide health information updates confidentially to the registry in the future; and

(viii) the terms of the gamete donation matched agreement or the gamete donation agency agreement.

(d) The department of health, in consultation with the task force on life and the law, shall develop and maintain a checklist of information that must be reviewed with a potential person acting as surrogate and requirements the potential sperm donor must comply with before they provide informed medical and legal consent to enter into a surrogacy agreement, including:

(1) The potential person acting as surrogate must be informed of the following medical information, which shall be provided in writing to the potential person acting as surrogate and reviewed verbally with the potential person acting as surrogate:

(i) the results of the potential person acting as surrogate's medical and psychological screenings and whether they have any health conditions that disqualify them from undergoing a surrogate pregnancy or that would put them at greater risk of adverse health outcomes during a surrogate pregnancy;

(ii) the medications and medical and surgical procedures associated with surrogate pregnancy and their potential risks or side effects;

(iii) that in vitro fertilization procedures and prenatal and obstetric care will be administered according to the best practices described by the American College of Obstetricians and Gynecologists;

(iv) the medical risks of surrogate pregnancy, including:

(A) the possibility and risk of multiple births and preterm births, which also increases the chance of a medically-necessary cesarean section;

(B) the risks of multiple embryo transfer and disclosure that multiple embryo transfer contradicts the guidelines of the American college of obstetrics and gynecology;

(C) the risk of pregnancy complications, including preeclampsia;

(D) the risks of delivery by cesarean section and disclosure that elective cesarean section contradicts the guidelines of the American college of obstetrics and gynecology; and

(E) the known health risks to persons acting as surrogates and surrogate-born persons, including disclosure that all health risks are not known due to lack of data.

(2) The potential person acting as surrogate shall attend a counseling session regarding issues related to surrogacy, including:

(i) the potential psychological, emotional, and psychosocial risks to the person acting as surrogate, their current and future children and partner, and any surrogate-born persons;

(ii) best practices for talking to a person acting as surrogate's children and other family members about surrogacy; and

(iii) impacts on their personal lives.

(3) The potential person acting as surrogate must be informed of the following legal information, which shall be provided in writing to the potential person acting as surrogate and reviewed verbally with the potential person acting as surrogate:

(i) the rights a person acting as surrogate is afforded in the surrogate's bill of rights pursuant to part six of this article and how to implement each right, and rights that surrogate-born individuals are afforded in the bill of rights of donor-conceived and surrogate-born individuals pursuant to part eleven of this article;

(ii) compensation received pursuant to a surrogacy agreement is taxable and may affect the eligibility of the person acting as surrogate and the person acting as surrogate's spouse, if applicable, for public benefits or the amount of such benefits, including social security benefits;

(iii) a person acting as surrogate is required by New York state law to transfer parental rights immediately upon the birth of any child born pursuant to a surrogacy agreement under part four of this article and pursuant to section 581-203 of this article. The requirement is irrevocable, even if the intended parent or parents are found to have been convicted of criminal behavior, domestic violence, or child abuse;

(iv) information about the central assisted reproduction registry, including:

(A) the purpose of the registry;

(B) what personal and clinical data that is collected and how it is used;

(C) how collected personal information is secured and kept confidential;

(D) that a person acting as surrogate is required to register before executing a surrogacy agreement; and

(E) how the person acting as surrogate can voluntarily provide health information updates confidentially to the registry in the future; and

(v) the terms of the surrogacy agreement.

(e) The department of health, in consultation with the task force on life and the law, shall develop and maintain a checklist of information that must be reviewed with the intended parent or parents before they provide informed medical and legal consent to enter into a gamete donation matched agreement or a gamete donation agency agreement, including:

(1) The intended parent or parents must be informed of the following medical information, which shall be provided in writing to the intended parent or parents and reviewed verbally with the intended parent or parents:

(i) if the intended parent or parents are using donor eggs, the medications and medical and surgical procedures associated with ovarian stimulation and oocyte retrieval and their potential risks or side effects under subparagraph (ii) of paragraph one of subdivision (b) of this section;

(ii) if the intended parent or parents are using donor eggs, known health risks to egg donors and donor-conceived persons, including disclosure that all health risks are not known due to lack of data under subparagraph (iii) of paragraph one of subdivision (b) of this section; and

(iii) if the intended parent or parents are using donor sperm, known health risks to donor-conceived children, including disclosure that all health risks are not known due to lack of data, under subparagraph (ii) of paragraph one of subdivision (c) of this section.

(2) The intended parent or parents shall attend a counseling session regarding issues related to using donor gametes to help build their family, including:

(i) the potential psychological and emotional impacts of conceiving a child using donor gametes on the intended parent or parents and any current children;

(ii) the potential psychological and emotional impacts on donor-conceived children and risks to the mental health of donor-conceived children who are not told about being donor-conceived; and

(iii) the best practices for telling children they are donor-conceived.

(3) The intended parent or parents must be informed of the following legal information, which shall be provided in writing to the intended parent or parents and reviewed verbally with the intended parent or parents:

(i) the rights gamete donors are afforded in the gamete donor's bill of rights pursuant to part nine of this article;

(ii) the rights donor-conceived individuals are afforded in the donor-conceived and surrogate-born individual's bill of rights pursuant to part eleven of this article;

(iii) the maximum number of donor-conceived individuals that may be born in New York state that were conceived using assisted reproduction and the donor gametes provided by a single gamete donor, and the possibility that donor-conceived individuals who are conceived using gametes from the same donor may be born outside of New York state, which cannot be tracked or regulated by New York state;

(iv) if donor gametes are being used, the gamete donor's options regarding identity disclosure under section fourteen hundred seven of the general business law;

(v) information about the central assisted reproduction registry, including:

(A) the purpose of the registry;

(B) what personal and clinical data that is collected and how it is used;

(C) how collected personal information is secured and kept confidential; and

(D) how an intended parent can voluntarily provide health information updates confidentially for their donor-conceived child to the registry in the future; and

(vi) the terms of the gamete donation matched agreement or the gamete donation agency agreement.

(f) The department of health, in consultation with the task force on life and the law, shall develop and maintain a checklist of information that must be reviewed with the intended parent or parents before they provide informed medical and legal consent to enter into a surrogacy agreement, including:

(1) The intended parent or parents must be informed of the following medical information, which shall be provided in writing to the intended parent or parents and reviewed verbally with the intended parent or parents:

(i) if the intended parent or parents are using donor eggs, the medical information under subparagraphs (i), (ii) and (iii) of paragraph one of subdivision (e) of this section and if they are using donor sperm, the medical information under subparagraph (iii) of paragraph one of subdivision (e) of this section;

(ii) the medications and medical and surgical procedures associated with surrogate pregnancy and their potential risks or side effects under subparagraph (ii) of paragraph one of subdivision (d) of this section;

(iii) the medical risks of surrogate pregnancy listed under subparagraph (iv) of paragraph one of subdivision (d) of this section; and

(iv) the known health risks to persons acting as surrogates and surrogate-born persons, including disclosure that all health risks are not known due to lack of data, under clause (E) of subparagraph (iv) of paragraph one of subdivision (d) of this section.

(2) The intended parent or parents shall attend a counseling session regarding issues related to, if applicable, using donor gametes surrogacy to help build their family, including:

(i) the potential psychological and emotional impacts of conceiving a child using donor gametes, if applicable, and of engaging a person acting as surrogate on the intended parent or parents and any current children;

(ii) the potential psychological and emotional impacts on donor-conceived, if applicable, and surrogate-born children and risks to the mental health of children who are not told about being donor-conceived, if applicable, and surrogate-born; and

(iii) the best practices for telling children they are donor-conceived, if applicable, and surrogate-born.

(3) The intended parent or parents must be informed of the following legal information, which shall be provided in writing to the intended parent or parents and reviewed verbally with the intended parent or parents:

(i) if the intended parent or parents are using donor gametes to conceive the child that shall be born pursuant to a surrogacy agreement under part four of this article, the legal information required under paragraph three of subdivision (e) of this section;

(ii) the rights that a person acting as surrogate is afforded in the surrogate's bills of rights pursuant to part six of this article;

(iii) the rights that surrogate-born individuals are afforded in the bill of rights of donor-conceived and surrogate-born individuals pursuant to part eleven of this article;

(iv) that the person acting as surrogate has the same right to make decisions about their behavior during the surrogate pregnancy as other pregnant people have in New York state. Any provisions in a surrogacy agreement that restrict a surrogate's behavior are void and unenforceable;

(v) information about the central assisted reproduction registry, including:

(A) the purpose of the registry;

(B) what personal and clinical data that is collected and how it is used;

(C) how collected personal information is secured and kept confidential;

(D) that the intended parent or parents are required to register before executing a surrogacy agreement; and

(E) how an intended parent can voluntarily provide health information updates confidentially for their donor-conceived, if applicable, and surrogate-born child to the registry in the future; and

(vii) the terms of the surrogacy agreement.

§ 581-1003. Informed medical and legal consent procedures for a potential egg donor. Before a potential egg donor executes a gamete donation matched agreement or a gamete donation agency agreement, all of the following procedures must be completed and documented in order to provide informed medical and legal consent to enter into the agreement:

(a) The potential egg donor shall watch the video tutorial under subdivision (a) of section 581-1002 of this part and have an opportunity to speak with a representative to review the information and ask questions about the video and the procedure.

(b) An independent health care provider licensed under title eight of the education law shall provide the medical information required under paragraph one of subdivision (b) of section 581-1002 of this part in writing to the potential egg donor, and review the information with the potential egg donor, and answer questions the potential egg donor may have.

(c) The potential egg donor shall attend a counseling session with an independent mental health practitioner licensed under title eight of the education law who shall review the information required under paragraph two of subdivision (b) of section 581-1002 of this part. The cost of the counseling session shall be paid for by the agent, gamete agency, gamete bank, fertility clinic, surrogacy program, or health care provider, as applicable.

(d) A representative shall provide the legal information required under paragraph three of subdivision (b) of section 581-1002 of this part in writing, including a copy of the gamete donor's bill of rights and the bill of rights of donor-conceived and surrogate-born individuals, and review the information. The potential egg donor shall be provided an opportunity to consult with independent legal counsel licensed to practice in New York state, to be paid for by the agent, gamete agency, gamete bank, fertility clinic, surrogacy program, or health care provider, as applicable.

(e) The potential egg donor shall verify in a signed record that informed medical and legal consent procedures have been completed, they had an opportunity to ask questions, and they fully understand the information.

§ 581-1004. Informed medical and legal consent procedures for a potential sperm donor. Before a potential sperm donor executes a gamete donation matched agreement or a gamete donation agency agreement, all of the following procedures must be completed and documented in order to provide informed medical and legal consent to enter into the agreement:

(a) The potential sperm donor shall watch the video tutorial under subdivision (a) of section 581-1002 of this part and have an opportunity to speak with a representative to review the information and ask questions about the video and the procedure.

(b) An independent health care provider licensed under title eight of the education law shall provide the medical information required under paragraph one of subdivision (c) of section 581-1002 of this part in writing to the potential sperm donor, review the information with the potential sperm donor, and answer questions the potential sperm donor may have.

(c) The potential sperm donor shall receive the information required under paragraph two of subdivision (c) of section 581-1002 of this part in writing from an independent mental health practitioner licensed under title eight of the education law.

(d) A representative shall provide the legal information required under paragraph three of subdivision (c) of section 581-1002 of this part in writing, including a copy of the gamete donor's bill of rights and the bill of rights of donor-conceived and surrogate-born individuals. The potential sperm donor shall be provided an opportunity to consult with independent legal counsel licensed to practice in New York state, to be paid for by the agent, gamete agency, gamete bank, fertility clinic, surrogacy program, or health care provider, as applicable.

(e) The potential sperm donor shall verify in a signed record that informed medical and legal consent procedures have been completed, they had an opportunity to ask questions, and they fully understand the information.

§ 581-1005. Informed medical and legal consent procedures for a potential person acting as surrogate. Before a potential person acting as surrogate executes a surrogacy agreement, all of the following procedures must be completed and documented in order to provide informed medical and legal consent to enter into the surrogacy agreement:

(a) The potential person acting as surrogate shall watch the video tutorial required under subdivision (a) of section 581-1002 of this part and have an opportunity to speak with a representative to review the information and ask questions about the video and surrogacy;

(b) An independent health care provider licensed under title eight of the education law shall provide the medical information required under paragraph one of subdivision (d) of section 581-1002 of this part in writing to the potential person acting as surrogate, review the information with the potential person acting as surrogate, and answer questions the potential person acting as surrogate may have;

(c) The potential person acting as surrogate shall have a counseling session with an independent mental health practitioner licensed under title eight of the education law, who shall review the information required under paragraph two of subdivision (d) of section 581-1002 of this part. The cost of the counseling session shall be paid for by the surrogacy program, fertility clinic, or the intended parent or parents, as applicable;

(d) The independent legal counsel licensed to practice in New York state who represents the person acting as surrogate shall provide the legal information required under paragraph three of subdivision (d) of section 581-1002 of this part in writing, including the surrogate's bill of rights and the bill of rights of donor-conceived and surrogate-born people, and review the information;

(e) The potential person acting as surrogate shall verify in a signed record that informed medical and legal consent procedures have been completed, they had an opportunity to ask questions, and they fully understand the information.

§ 581-1006. Informed medical and legal consent procedures for an intended parent or parents. Before an intended parent or parents execute

a gamete donation matched agreement, a gamete donation agency agreement, or a surrogacy agreement, the following procedures must be completed and documented in order to provide informed medical and legal consent to enter into the agreement:

(a) The intended parent or parents shall watch the video tutorial or tutorials required under subdivision (a) of section 581-1002 of this part and have an opportunity to speak with a representative to review the information and ask questions.

(b) If the intended parent or parents are entering into a gamete donation matched agreement or a gamete donation agency agreement, an independent health care provider licensed under title eight of the education law shall provide the medical information required under paragraph one of subdivision (e) of section 581-1002 of this part in writing to the intended parent or parents, review the information with the intended parent or parents, and answer questions the intended parent or parents may have. If the intended parent or parents are entering into a surrogacy agreement, an independent health care provider licensed under title eight of the education law shall provide the medical information required under paragraph one of subdivision (f) of section 581-1002 of this part in writing to the intended parent or parents, review the information with the intended parent or parents, and answer questions the intended parent or parents may have.

(c) If the intended parent or parents are entering into a gamete donation matched agreement or a gamete donation agency agreement, they shall attend a counseling session with an independent mental health practitioner licensed under title eight of the education law, who shall review the information required under paragraph (2) of subdivision (e) of section 581-1002 of this part with the intended parent or parents. If the intended parent or parents are entering into a surrogacy agreement, they shall attend a counseling session with an independent mental health practitioner licensed under title eight of the education law, who shall review the information required under paragraph two of subdivision (f) of section 581-1002 of this part.

(d) If the intended parent or parents are entering into a gamete donation matched agreement or a gamete donation agency agreement, a representative shall provide the legal information required under paragraph three of subdivision (e) of section 581-1002 of this part in writing to the intended parent or parents, including the gamete donor's bill of rights and the bill of rights of donor-conceived and surrogate-born people, and review the information. If the intended parent or parents are entering into a surrogacy agreement, the independent legal counsel licensed to practice in New York state who represents them shall provide the legal information required under paragraph three of subdivision (f) of section 581-1002 of this part in writing to the intended parent or parents, including a copy of the surrogate's bill of rights and the bill of rights of donor-conceived and surrogate-born people, and review the information.

(e) Each intended parent shall verify in writing that informed medical and legal consent procedures have been completed, they had an opportunity to ask questions, and they fully understand the information that was provided.

PART 11
BILL OF RIGHTS OF DONOR-CONCEIVED AND SURROGATE-BORN INDIVIDUALS

Section 581-1101. Applicability.
581-1102. Original birth certificate.
581-1103. Access to nonidentifying information.
581-1104. Access to identifying information.

§ 581-1101. Applicability. The rights enumerated in this part shall apply to any donor-conceived or surrogate-born individual who was conceived by assisted reproduction pursuant to part four or part eight of this article to ensure that all individuals have access to the identifying and medical information permitted by New York state law of everyone involved in their creation.

§ 581-1102. Original birth certificate. (a) For the purposes of this section, "original birth certificate" means the unamended birth certificate that contains the information required under section forty-one hundred thirty-two of the public health law, including the name of the person who acted as surrogate who gave birth to the child, and the name of any identified gamete donor or the donor reference number of any nonidentified gamete donor whose gametes were used in assisted reproduction to conceive the child.

(b) An individual who is donor-conceived or surrogate-born pursuant to part four or part eight of this article has the right to obtain upon request a certified copy of their original birth certificate pursuant to section forty-one hundred thirty-eight-e of the public health law, once they turn eighteen years of age.

§ 581-1103. Access to nonidentifying information. An individual who is donor-conceived pursuant to part four or part eight of this article has the right to obtain upon request nonidentifying medical and psychological health information of any nonidentified gamete donor or once the individual turns eighteen years of age, or a parent or legal guardian may request the information if the donor-conceived person is under the age of eighteen.

§ 581-1104. Access to identifying information. (a) An individual who is donor-conceived pursuant to part four or part eight of this article has the right to obtain upon request identifying and medical and psychological health information of any identified gamete donor who provided the donor gametes that were used for conception of the individual once the donor-conceived individual turns eighteen years of age, or a parent or legal guardian may request the information if the donor-conceived person is under the age of eighteen.

(b) An individual who is conceived pursuant to part four of this article has the right to obtain upon request identifying and medical and psychological health information of the person who acted as surrogate and gave birth to them once the surrogate-born individual turns eighteen years of age, or a parent or legal guardian may request the information if the surrogate-born person is under the age of eighteen.

§ 21. Subdivision 1 of section 2599-cc of the public health law, as added by section 12 of part L of chapter 56 of the laws of 2020, is amended to read as follows:

1. The commissioner shall promulgate regulations on the practice of gestational surrogacy. Such regulations shall include, but not be limited to:

(a) guidelines and procedures for obtaining fully informed consent from potential persons acting as surrogates, and from intended parents to enter into a surrogacy agreement under part four of article five-C of the family court act, including but not limited to [~~a full disclosure of any known or potential health risks and mental health impacts associated~~

~~with acting as a surrogate~~] the procedure and requirements under part ten of article five-C of the family court act;

(b) the development and distribution, in printed form and on the department's website, of informational material relating to gestational surrogacy, including but not limited to the scope of information provided on the website of the Human Fertilisation & Embryology Authority of the United Kingdom;

(c) the establishment of [~~a voluntary~~] the central [~~tracking~~] assisted reproduction registry of required information related to persons acting as surrogates and surrogacy, as reported by surrogacy programs, fertility clinics, and other designated entities licensed by the department pursuant to article forty-four of the general business law [~~upon the affirmative consent of a person acting as surrogate~~]. Such registry shall provide a means for gathering and maintaining accurate information on the:

(i) identifying information of and contact information for persons who act as surrogates;

(ii) number of times a person has acted as a surrogate;

[~~(ii)~~] (iii) medical history and optional self-reported health information [~~of~~] updates provided by the person acting as surrogate; [~~and~~]

(iv) medical information and outcomes of the surrogate pregnancy and birth;

(v) health information of children born pursuant to a surrogacy agreement; and

[~~(iii)~~] (vi) other information deemed appropriate by the commissioner;

(d) the development of guidelines, procedures or protocols, in consultation with the American college of obstetricians and gynecologists [~~and the American society for reproductive medicine,~~] to assist physicians in screening potential surrogates for their ability to serve as a surrogate as required under [~~subdivision~~] paragraph four of subdivision (a) of section 581-402 of the family court act including taking into consideration the potential surrogates family medical history and complications from prior pregnancies and known health conditions that may pose a risk to the potential surrogate during pregnancy [~~and~~], including, but not limited to the following criteria that would disqualify a potential person acting as surrogate from entering into a surrogacy agreement under part four of article five-C of the family court act: whether the potential person acting as surrogate meets any of the American college of obstetricians and gynecologists (ACOG) medical and mental health criteria for high-risk pregnancy;

(e) the development of best medical practices to protect the health of persons acting as surrogates and surrogate-born children, including requiring that health care providers licensed under title eight of the education law shall counsel persons acting as surrogates about immunizations in accordance with best medical practice. Immunizations shall be administered only upon the request of the person acting as surrogate;

(f) the development of guidance to reduce conflicts of interest among physicians providing health care services to the surrogate[~~.~~]; and

(g) procedures for a surrogacy program, assisted reproduction service provider, or other entity to determine the eligibility of a potential person acting as surrogate to enter into a surrogacy agreement, pursuant to part four of article five-C of the family court act.

§ 22. The public health law is amended by adding four new sections 2599-dd, 2599-ee, 2599-ff and 2599-gg to read as follows:

§ 2599-dd. Gamete donation. The commissioner, in consultation with the transplant council or the task force on life and the law, shall promul-

gate regulations on gamete donation. Such regulations shall include, but not be limited to:

1. Guidelines and procedures for obtaining fully informed medical and legal consent, including but not limited to the procedures and requirements under part ten of article five-C of the family court act, from:

(a) a potential gamete donor and an intended parent or parents to enter into a gamete donation matched agreement; and

(b) a potential gamete donor or an intended parent or parents to enter into a gamete donation agency agreement.

2. The development and distribution, in printed form and on the department website, of informational material relating to gamete donation, including but not limited to the scope of information provided on the website of the Human Fertilisation & Embryology Authority of the United Kingdom.

3. The establishment of the central assisted reproduction registry of required information related to ova and sperm donors and gamete donation, as reported by agents, gamete agencies, gamete banks, surrogacy programs, fertility clinics, and health care providers licensed by the department pursuant to article forty-four of the general business law. Such registry shall provide a means for gathering and maintaining accurate information on:

(a) identifying information of and contact information for gamete donors, provided that a nonidentified gamete donor upon request may be listed by a reference number;

(b) the number of times an egg donor has undergone ovarian stimulation, including for purposes of egg freezing;

(c) medical history and optional self-reported health information updates provided by the gamete donor;

(d) health information of donor-conceived persons;

(e) number of donor-conceived persons born in New York state using the gametes of each egg and sperm donor; and

(f) other information deemed appropriate by the commissioner.

4. The development of guidelines, procedures or protocols, in consultation with the transplant council or the task force on life and the law, to assist physicians licensed under title eight of the education law when screening potential gamete donors for their ability to produce gametes for use in assisted reproduction pursuant to a gamete donation matched agreement or a gamete donation agency agreement pursuant to part eight of article five-C of the family court act, including taking into consideration the potential gamete donor's family medical history and medical complications from prior cycles of ovarian stimulation and oocyte retrieval and known health conditions that may pose a risk to the potential gamete donor or any donor-conceived persons, including, but not limited to the following criteria that would disqualify a potential gamete donor from entering into a gamete donation matched agreement or a gamete donation agency agreement under part eight of the family court act:

(a) a potential egg donor has any medical conditions indicated by the American college of obstetricians and gynecologists (ACOG) that place individuals at risk of ovarian hyperstimulation;

(b) a potential egg donor has previously undergone ovarian stimulation more than six times, including for purposes of egg freezing; or

(c) a potential egg donor has previously experienced ovarian hyperstimulation syndrome (OHSS), polycystic ovarian syndrome (PCOS), or endometriosis.

5. The development of best medical practices to protect the health of egg donors and donor-conceived persons, including but not limited to:

(a) conservative low stimulation medication protocols aiming to produce no more than twenty to twenty-five eggs in a single cycle in compliance with best medical practice;

(b) an egg retrieval cycle shall be canceled, if necessary, in accordance with best medical practice to avoid ovarian hyperstimulation syndrome; and

(c) there shall be a minimum of three months after an egg donor undergoes oocyte retrieval before the egg donor enters into a gamete donation matched agreement or a gamete donation agency agreement.

6. Procedures for an agent, gamete agency, gamete bank, surrogacy program, fertility clinic, or health care provider to determine if a potential egg donor is eligible to enter into a gamete donation matched agreement or a gamete donation agency agreement, under subdivision (a) of section 581-803 of the family court act, including procedures to verify the approximate number of donor-conceived children that have already been born in New York state using assisted reproduction and the gametes of the potential egg or sperm donor.

§ 2599-ee. New York state ART, gamete donation, and gestational surrogacy program. 1. There is hereby established within the department the New York state ART, gamete donation, and gestational surrogacy program, hereinafter referred to as "the program".

2. The program shall be responsible for the following duties:

(a) administer the central assisted reproduction registry and process requests from authorized individuals for nonidentifying medical information of nonidentified gamete donors and identifying and medical information of identified gamete donors and persons acting as surrogates;

(b) maintain copies of gamete donation matched agreements, gamete donation agency agreements, and surrogacy agreements along with all required records and documents in a manner that protects confidentiality and privacy of information;

(c) develop print and electronic materials with educational information, current best practices, and research findings on topics related to assisted reproductive technology, gamete donation, and surrogacy; and

(d) develop the content and maintain a website with information and resources on assisted reproduction, gamete donation, and surrogacy under subdivision two of section twenty-five hundred ninety-nine-cc and subdivision two of section twenty-five hundred ninety-nine-dd of this article.

3. (a) The program shall perform such acts, prescribe such forms and propose such rules, regulations and orders as it may deem necessary or proper to fully effectuate the provisions of this article.

(b) The program shall have the power to promulgate any and all necessary rules and regulations governing assisted reproduction, gamete donation, and surrogacy, practices in this state.

4. The task force on life and the law shall act as advisory board for the program. The advisory board shall consider all matters submitted to it by the program, including rulemaking, advising the office and legislature on assisted reproduction, gamete donation, and surrogacy, practices and issues.

5. The action, proceedings, authority, and orders of the office in enforcing the provisions of this article and applying them to specific cases shall at all times be regarded as in their nature judicial and shall be treated as prima facie just and legal.

§ 2599-ff. Central assisted reproduction registry. 1. The ova and sperm donor registry and the surrogate registry shall be known collectively as the central assisted reproduction registry.

2. The program shall administer the central assisted reproduction registry.

3. The following individuals, surrogacy programs, assisted reproduction service providers, and other entities are required to register:

(a) a potential person acting as surrogate who is entering into a surrogacy agreement pursuant to part four of article five-C of the family court act;

(b) a potential gamete donor entering into a gamete donation matched agreement or a gamete donation agency agreement pursuant to part eight of article five-C of the family court act;

(c) an intended parent or parents entering into a surrogacy agreement pursuant to part four of article five-C of the family court act; and

(d) a licensed agent, gamete agency, surrogacy program, gamete bank, fertility clinic, or a health care provider that provides matching or recruitment services or services contemplated by a gamete donation matched agreement, a gamete donation agency agreement, or a surrogacy agreement;

4. The commissioner shall promulgate regulations on the following:

(a) registration procedures for the individuals, surrogacy programs, assisted reproduction service providers and other entities that are required to register with the central assisted reproduction registry pursuant to subdivision three of this section;

(b) procedures for a gamete donor, a person who acted as surrogate, and a donor-conceived or surrogate-born individual, or a parent or legal guardian if the donor-conceived or surrogate-born person is under the age of eighteen to provide optional self-reported health information updates to the central assisted reproduction registry;

(c) procedures for a donor-conceived or a surrogate-born individual to request upon attaining eighteen years of age nonidentifying medical information of a nonidentified gamete donor who provided donor eggs or sperm that were used for assisted reproduction for their conception pursuant to part four or part eight of article five-C of the family court act, or for a parent or legal guardian to request the information if the donor-conceived or surrogate-born person is under the age of eighteen;

(d) procedures for a donor-conceived or a surrogate-born individual to request upon attaining eighteen years of age identifying and medical information of an identified gamete donor who provided donor eggs or sperm that were used for assisted reproduction for their conception pursuant to part four or part eight of article five-C of the family court act, or for a parent or legal guardian to request the information if the donor-conceived or surrogate-born person is under the age of eighteen;

(e) procedures for a surrogate-born individual upon attaining eighteen years of age to request identifying and medical information of the person who acted as surrogate and gave birth to them pursuant to part four of article five-C of the family court act, or for a parent or legal guardian to request the information if the surrogate-born person is under the age of eighteen; and

(f) procedures to request nonidentifying health information from the central assisted reproduction registry for purposes of public health research.

5. The central assisted reproduction registry shall be operated by employees of the department specifically designated by the commissioner. Access to all records and information in the registry shall be limited to such designated employees and such records and information shall be kept strictly confidential except as specifically authorized by law. The commissioner shall establish rules and procedures designed to keep such records and information separate and apart from other records of the department and kept in a manner where access to such records and information is strictly limited to such designated employees and shall promulgate regulations designed to effectuate the purposes of this section. Notwithstanding any inconsistent provision of this chapter or any other law to the contrary, the commissioner shall have access to the information authorized to be released pursuant to this section contained in surrogacy agreements, gamete donation agreements, and clinical data maintained by the New York State ART, gamete donation, and gestational surrogacy program and any agency, court or department having appropriate records which will enable the commissioner to effectuate the purposes of this section and may require the cooperation of such agency, court or department in providing the information authorized to be released pursuant to this section, provided, however, that the commissioner shall not have access to the actual records of any agency, court or department maintaining such records.

§ 2599-gg. Gamete donation, assisted reproduction, and surrogacy reporting requirements. The commissioner shall promulgate regulations on gamete donation, assisted reproduction, and surrogacy reporting procedures and requirements. Such regulations shall include, but not be limited to:

1. Reporting requirements for surrogacy programs, assisted reproduction service providers, health care providers, other entities that provide services contemplated under part four or part eight of article five-C of the family court act, and state or local departments of health information and outcomes related to gamete donation, assisted reproduction, and surrogacy to the central assisted reproduction registry, including the following:

(a) Gamete donation data, including:

(i) the name, contact information, age, and sex or gender of the gamete donor;

(ii) the donor screening results;

(iii) the name of any agent, gamete agency, gamete bank, surrogacy program, fertility clinic, and health care practitioner that provided matching services, if applicable, and that collected the donor gametes;

(iv) medication and oocyte retrieval protocols;

(v) egg retrieval cycle or sperm donation outcomes, including any adverse reactions or health complications experienced by the egg donor, the number and quality of oocytes retrieved, the quality of sperm produced, insemination and embryo incubation protocols, and the number and quality of embryos, as applicable; and

(vi) any resulting clinical pregnancy and donor-conceived person born.

(b) Surrogacy data:

(i) name, contact information, and age of the person acting as surrogate, and name and contact information of the intended parent or parents;

(ii) the screening results of the person acting as surrogate;

(iii) the name of any surrogacy program, and fertility clinic, health care provider, and other entity that provided matching services or assisted reproduction services contemplated by the surrogacy agreement;

(iv) medication and embryo transfer protocols;
(v) embryo transfer cycle outcomes, including any adverse reactions or health complications experienced by the person acting as surrogate, the number of embryos transferred, and if clinical pregnancy was achieved;
(vi) the number of fetuses carried, and any health complications during the surrogate pregnancy and delivery, as applicable; and
(vii) the number of any resulting children born and any health complications.
2. Reporting procedures and protocol to ensure confidentiality of health information.
3. Penalties for agents, gamete agencies, surrogacy programs, gamete banks, and fertility clinics, and health care practitioners licensed by the department for violating reporting requirements, to include financial penalties and loss of licensure.

§ 23. Subdivision (c) of section 1400 of the general business law, as added by section 11 of part L of chapter 56 of the laws of 2020, is amended to read as follows:

(c) "Surrogacy program" does not include any party to a surrogacy agreement or any person licensed to practice law and representing a party to the surrogacy agreement, but does include and is not limited to any agency, agent, business, or individual engaged in, arranging, or facilitating transactions contemplated by a surrogacy agreement, regardless of whether such agreement ultimately comports with the requirements of part four of article five-C of the family court act.

§ 24. Section 1401 of the general business law, as added by section 11 of part L of chapter 56 of the laws of 2020, is amended to read as follows:

§ 1401. Surrogacy programs regulated under this article. The provisions of this article apply to New York state licensed and registered surrogacy programs arranging or facilitating transactions contemplated by a surrogacy agreement under part four of article five-C of the family court act if:

(a) The surrogacy program does business in New York state;

(b) A person acting as surrogate who is party to a surrogacy agreement resides in New York state during the term of the surrogacy agreement; or

(c) Any medical procedures under the surrogacy agreement are performed in New York state.

§ 25. Section 1402 of the general business law, as added by section 11 of part L of chapter 56 of the laws of 2020, is amended to read as follows:

§ 1402. Assisted reproduction service providers regulated under this article. The provisions of this article apply to agents, gamete agencies, gamete banks, fertility clinics, health care providers and other entities if:

1. The agent, gamete agency, gamete bank, fertility clinic, health care provider, or other entity does business in this state, including:
(a) recruiting or matching gamete donors who are located in or residents of New York state, or matching gamete donors with intended parents who are located in or residents of New York state; or
(b) collecting gametes from gamete donors who are located in or residents of New York state; or
(c) distributing donor gametes to intended parents who are located in or residents of New York state; or

2. Any health care services performed, provided or otherwise arranged by the entity are performed in this state, including diagnostic, medical, or surgical services associated with screening potential gamete

donors or in furtherance of collecting donor gametes under part four or part eight of article five-C of the family court act.

§ 26. Section 1403 of the general business law is renumbered section 1409 and subdivision (g), as added by section 11 of part L of chapter 56 of the laws of 2020, is amended to read as follows:

(g) Shall ensure that all potential parties to a surrogacy agreement, at the time of consultation with such surrogacy program, are provided with written notice of the surrogates' bill of rights enumerated in part six, the gamete donor's bill of rights enumerated in part nine and the bill of rights of donor-conceived and surrogate-born individuals enumerated in part eleven of article five-C of the family court act.

§ 27. Section 1404 of the general business law is renumbered section 1410 and subdivision 1, as added by section 11 of part L of chapter 56 of the laws of 2020, is amended to read as follows:

1. The department of health, in consultation with the department of financial services, shall promulgate rules and regulations to implement the requirements of this article regarding surrogacy programs and assisted reproduction service providers in a manner that ensures the safety and health of gamete [~~providers and~~], donors, persons serving as surrogates, donor-conceived individuals, and surrogate-born individuals. Such regulations shall:

(a) Require agents, gamete agencies, surrogacy programs [~~to monitor compliance with surrogacy agreements eligibility and requirements in state law~~], gamete banks, fertility clinics, health care practitioners and other entities that recruit or match gamete donors, or that collect donor gametes to make publicly available a compensation list for gamete donation that is accessible to gamete donors and the general public on the entity's website and in print; [~~and~~]

(b) Require [~~the surrogacy programs and assisted reproduction service providers to administer informed consent procedures that comply with regulations promulgated by the department of health under section twenty-five hundred ninety-nine-cc of the public health law.~~] agents, gamete agencies, surrogacy programs, gamete banks, fertility clinics, health care practitioners, and other entities, to advertise and make representations of gamete donation pursuant to section fourteen hundred eight of this part;

(c) Require agents, gamete agencies, surrogacy programs, gamete banks, fertility clinics, health care practitioners, and other entities to cover the cost of medical and psychological screening of potential gamete donors. Gamete donors and intended parents may not be required to cover or reimburse such screening costs;

(d) Require agents, gamete agencies, surrogacy programs, gamete banks, fertility clinics, health care practitioners and other entities that distribute donor gametes to an intended parent or parents located in or who are residents of New York state for use in assisted reproduction to track and report the number of donor-conceived persons born in New York state using the gametes of each donor who entered into a gamete donation matched agreement or a gamete donation agency agreement under part eight of article five-C of the family court act to the central assisted reproduction registry;

(e) Require surrogacy programs to monitor compliance with surrogacy agreements eligibility and requirements in state law;

(f) Require surrogacy programs and assisted reproduction service providers to administer informed medical and legal consent procedures that comply with part ten of article five-C of the family court act and

with regulations promulgated by the department of health under section twenty-five hundred ninety-nine-cc of the public health law;

(g) Require surrogacy programs, fertility clinics, health care practitioners, and other entities that recruit persons acting as surrogates to track and report the number of children delivered pursuant to a surrogacy agreement by each person acting as surrogate to the central assisted reproduction registry; and

(h) Require surrogacy programs, agents, gamete agencies, gamete banks, fertility clinics, health care practitioners, and other entities that provide services contemplated by gamete donation matched agreements, gamete donation agency agreements, and surrogacy agreements to pay an annual fee which shall be determined by the commissioner of the department of health that shall be used to pay for maintenance costs of the central assisted reproduction registry.

§ 28. The general business law is amended by adding six new sections 1403, 1404, 1405, 1406, 1407 and 1408 to read as follows:

§ 1403. Matching service providers regulated under this article. The provisions of this article shall apply to an agent, gamete agency, surrogacy program, gamete bank, fertility clinic, health care practitioner, or other assisted reproduction service providers that provides matching services to potential gamete donors or intended parents located in or who are residents of New York state.

§ 1404. Limits on number of donor-conceived persons born in New York state using gametes donated by each egg and sperm donor. Effective January first, two thousand twenty-six, a maximum of ten donor-conceived individuals who are conceived using a single egg or sperm donor's gametes may be born in New York state. This number does not include a gamete donor's own biological children.

1. When determining the eligibility of a potential gamete donor to enter into a gamete donation matched agreement or a gamete donation agency agreement, an agent, gamete agency, surrogacy program, gamete bank, health care practitioner, or fertility clinic, hereinafter referred to as an "entity", shall follow regulations issued pursuant to subdivision six of section twenty-five hundred ninety-nine-dd of the public health law to determine how many donor-conceived individuals who were conceived using the donor gametes of a potential egg or sperm donor have been born in New York state.

2. If the entity determines that at least ten donor-conceived individuals have been born in New York state, the entity shall not match the potential gamete donor, collect their gametes, or distribute the donor's gametes that were already collected on or after the effective date of this section to an intended parent or parents located in or who are residents of New York state. The potential gamete donor shall not be eligible to enter into a gamete donation matched agreement or a gamete donation agency agreement.

§ 1405. Nonidentified gamete donation prohibited. Effective January first, two thousand twenty-six, nonidentified gamete donation will no longer be permissible in New York state. Once this section takes effect:

1. An individual located in or who is a resident of New York state who intends to receive compensation for time and effort to produce gametes for use in assisted reproduction will be required to sign a certified statement that they agree to identified donation;

2. An agent, gamete agency, gamete bank, surrogacy program, fertility clinic, or health care practitioner, hereinafter referred to as an "entity", that distributes donor gametes to an intended parent or parents located in or who are residents of New York state must only

distribute the gametes of donors who have signed a certified statement agreeing to identified donation;

3. The entity shall inform the potential gamete donor that any donor-conceived individuals will be able to obtain upon request identifying and medical information of the gamete donor upon attaining eighteen years of age, or the legal parent or guardian will be able to request the information if the donor-conceived individual is under the age of eighteen; and

4. If a potential gamete donor does not agree to identified donation, an entity shall not match or collect gametes from the potential gamete donor.

§ 1406. Collection of identifying information and medical history and determination of gamete donor eligibility. 1. For the purposes of this section, the following terms shall mean:

(a) "identifying information" means:

(i) the gamete donor's full name;

(ii) the gamete donor's date of birth; and

(iii) the gamete donor's permanent address, current address, and other contact information at the time of the donation. Other contact information includes the gamete donor's phone number and email address; and

(b) "medical history" means information regarding any:

(i) present physical and psychological illness of the donor;

(ii) past physical and psychological illness of the donor; and

(iii) social, genetic, and family medical history pertaining to the donor's health.

2. An agent, gamete agency, surrogacy program, gamete bank, fertility clinic, or health care practitioner, hereinafter referred to as an "entity", that shall collect gametes from a potential gamete donor or shall match a potential gamete donor with an intended parent or parents shall collect the potential donor's identifying information and medical history:

(a) The entity shall verify the following information about each potential gamete donor to determine their eligibility to enter into a gamete donation matched agreement or a gamete donation agency agreement, under part eight of article five-C of the family court act:

(i) the age of the potential gamete donor;

(ii) the number of times a potential egg donor has previously undergone ovarian stimulation, including to freeze their eggs;

(iii) following procedures promulgated pursuant to subdivision six of section twenty-five hundred ninety-nine-dd of the public health law, the approximate number of donor-conceived persons that were conceived pursuant to part eight of article five-C of the family court act using the donor gametes of the potential donor and have been born in New York state;

(b) At least once every three years, the entity shall request updates from the donor. The entity shall report required information and updated donor information as received pursuant to section twenty-five hundred ninety-nine-gg of the public health law to the central assisted reproduction registry.

3. An entity that receives gametes from another entity that collected the gametes shall record the name of and contact information for the entity from which it received the gametes at the time of receipt and:

(a) The entity that collected the gametes shall provide a certified statement that was signed by the gamete donor of the individual's donative intent. Should the entity that collected the gametes not provide such certification, the entity shall certify that the gametes were

donated and the gamete donor does not have parental or proprietary interest in the gametes; and

(b) The entity that collected the gametes shall provide copies of all identifying information and medical and screening records of the gamete donor;

(c) If an entity that collects donor gametes after the effective date of this section of this article shall transfer the donor gametes to another entity, the entity that collected the gametes shall provide a certified statement that was signed by the gamete donor declaring their agreement to identified gamete donation. If the entity that collected the gametes does not possess such certification, it may not transfer the donor gametes to another entity licensed by New York state.

§ 1407. Gamete donor identity disclosure. 1. An agent, gamete agency, gamete bank, surrogacy program, fertility clinic, health care provider, or other entity that recruits or matches a potential gamete donor shall counsel them on their identity disclosure options and provide the following information:

(a) A potential donor who shall enter into a gamete donation matched agreement or a gamete donation agency agreement under part eight of article five-C of the family court act prior to the effective date of section fourteen hundred five of this article may agree to donate gametes as an identified or nonidentified gamete donor. A donor who shall enter into a gamete donation matched agreement or a gamete donation agency agreement under part eight of article five-C of the family court act after the effective date of section fourteen hundred five of this article must agree to donate gametes as an identified gamete donor. The gamete donor shall certify in a written record that they agree to nonidentified or identified gamete donation; and

(b) nonidentified gamete donors are unlikely to remain anonymous to any donor-conceived persons due to DNA testing, the possibility of data breaches, and unforeseen technological developments; and

(c) any donor-conceived person who was conceived pursuant to part four or part eight of article five-C of the family court act may obtain upon request nonidentifying medical information of a nonidentified gamete donor or identifying and medical information of an identified gamete donor upon attaining eighteen years of age, or a legal parent or guardian may request the information if the donor-conceived person is under the age of eighteen; and

2. If a potential gamete donor does not agree to donate their gametes as an identified gamete donor after the effective date of section fourteen hundred five of this article, the agent, gamete agency, surrogacy program, gamete bank, fertility clinic, or health care provider shall not provide matching services, enter into a gamete donation agency agreement with the potential donor, or collect the potential donor's gametes.

§ 1408. Gamete donation advertising and representation. 1. Print, electronic and online advertisements that promote recruitment or matching of gamete donors who are residents of or located in New York state, or matching of gamete donors with intended parents who are residents of or located in New York state may not include any compensation amounts other than those specified on the compensation list of the agent, gamete agency, gamete bank, surrogacy program, fertility clinic, or health care provider that shall be made available to the public and is posted on the entity's website.

2. An agent, gamete bank, gamete agency, surrogacy program, fertility clinic, or health care provider that provides information to an intended

parent or parents who are considering entering into a gamete donation matched agreement or a gamete donation agency agreement shall make accurate representations of how many donor eggs an intended parent or parents might receive from one egg retrieval cycle. An entity shall communicate that it is not possible to know how many donor eggs will be received, and may not communicate that the number of donor eggs will be more than thirty.

§ 29. Subdivision 1 of section 4132 of the public health law, as added by chapter 104 of the laws of 1971, is amended to read as follows:

1. The certificate of birth shall contain such information, including the social security numbers of the parents, and identifying information of any gamete donor and person who acted as surrogate, if a parentage order was issued pursuant to section 581-202 or 581-203 of the family court act, and be in such form as the commissioner may prescribe.

(a) If a parentage order was issued pursuant to section 581-203 of the family court act, the first and last name of the person acting as surrogate who was a party to the judgment of parentage proceeding shall be included on the original certificate of birth as the birth mother; and

(b) If a parentage order was issued pursuant to section 581-202 of the family court act:

(i) the first and last name of any identified gamete donor shall be included on the original certificate of birth as a gamete donor; and

(ii) a reference number for any nonidentified gamete donor shall be included on the original certificate of birth as a gamete donor, provided that the donor gametes were collected prior to the effective date of section fourteen hundred five of the general business law; and

(c) If a parentage order was issued pursuant to section 581-203 of the family court act and the surrogate-born person was also donor-conceived, the information in paragraphs (a) and (b) of this subdivision shall be included on the original certificate of birth; and

(d) If a parentage order is issued pursuant to section 581-202 or 581-203 of the family court act, an asterisk shall be placed on the amended birth certificate.

§ 30. The section heading, subdivision 1 and paragraph (a) of subdivision 2 of section 4138-e of the public health law, as added by chapter 491 of the laws of 2019, are amended to read as follows:

[~~Adoptee's~~] The right of adoptees, donor-conceived individuals and surrogate-born individuals to a certified copy of [~~his or her~~] their birth certificate. 1. The legislature hereby states its intention to acknowledge, support and encourage the life-long health and well-being needs of persons who have been and will be adopted, donor-conceived, and surrogate-born in this state. The legislature further recognizes that the denial of access to accurate and complete medical and self-identifying data of any adopted person, donor-conceived, and surrogate-born person, known and wilfully withheld by others, may result in such person succumbing to preventable disease, premature death or otherwise unhealthy life, is a violation of that person's human rights and is contrary to the tenets of government. As such, the provisions of this section seek to establish considerations under the law for adopted donor-conceived, and surrogate-born persons equal to such considerations permitted by law to all non-adopted non-donor conceived, and non-surrogate born persons; this section does so while providing for the privacy of an adopted donor-conceived, and surrogate-born person and [~~his or her~~] their birth.

(a) Notwithstanding any other provision of law, the commissioner or a local registrar or any person authorized by the commissioner or a local

registrar, upon application, proof of identity and payment of a nominal fee, shall issue certified copies of original long form line by line, vault copy birth certificates, including any change attached to that certificate by a birth parent or parents, and any information provided to the commissioner or a local registrar pursuant to subdivision one of section one hundred fourteen of the domestic relations law, to (i) an adopted **donor-conceived or surrogate-born** person, if eighteen years of age or more, or (ii) if the adopted **donor-conceived or surrogate-born** person is deceased, the adopted person's direct line descendants, or (iii) the lawful representatives of such adopted person, or lawful representatives of such deceased adopted person's direct line descendants, as the case may be.

§ 31. Items (v) and (vii) of subparagraph (C) of paragraph 6 of subsection (k) of section 3221 of the insurance law, as amended by section 1 of part L of chapter 57 of the laws of 2019, are amended to read as follows:

(v)(I) For the purposes of this paragraph, "infertility" means a disease or condition characterized by the incapacity to impregnate another person or to conceive, defined by **(a)** the failure to establish a clinical pregnancy after twelve months of regular, unprotected sexual intercourse or therapeutic donor insemination, or after six months of regular, unprotected sexual intercourse or therapeutic donor insemination for a female thirty-five years of age or older**; or (b) a person's inability to reproduce either as a single individual or with their partner without medical intervention; or (c) a licensed physician's or osteopathic physician's findings based on a patient's medical, sexual, or reproductive history, age, physical findings, or diagnostic testing**. Earlier evaluation and treatment may be warranted based on an individual's medical**, sexual, or reproductive** history [~~or~~]**, age,** physical findings**, or diagnostic testing**.

(II) For purposes of this paragraph, "iatrogenic infertility" means an impairment of fertility by surgery, radiation, chemotherapy or other medical treatment affecting reproductive organs or processes.

(vii) Every large group policy delivered or issued for delivery in this state that provides medical, major medical or similar comprehensive-type coverage shall provide coverage for three [~~cycles of~~] **completed oocyte retrievals and** in-vitro fertilization [~~used in the treatment of infertility~~] **with unlimited embryo transfers from fresh or frozen oocytes or embryos from a covered retrieval, in accordance with the guidelines of the American College of Obstetricians and Gynecologists, using single embryo transfer (SET) when recommended and medically appropriate for the treatment of infertility**. Coverage may be subject to annual deductibles and coinsurance, including copayments, as may be deemed appropriate by the superintendent and as are consistent with those established for other benefits within a given policy. [~~For purposes of this item, a "cycle" is defined as either all treatment that starts when: preparatory medications are administered for ovarian stimulation for oocyte retrieval with the intent of undergoing in-vitro fertilization using a fresh embryo transfer; or medications are administered for endometrial preparation with the intent of undergoing in-vitro fertilization using a frozen embryo transfer.~~]

§ 32. Subparagraphs (E) and (G) of paragraph 3 of subsection (s) of section 4303 of the insurance law, as amended by section 2 of part L of chapter 57 of the laws of 2019, are amended to read as follows:

(E)(i) For the purposes of this subsection, "infertility" means a disease or condition characterized by the incapacity to impregnate

another person or to conceive, defined by **(a)** the failure to establish a clinical pregnancy after twelve months of regular, unprotected sexual intercourse or therapeutic donor insemination, or after six months of regular, unprotected sexual intercourse or therapeutic donor insemination for a female thirty-five years of age or older**; (b) a person's inability to reproduce either as a single individual or with their partner without medical intervention; or (c) a licensed physician's or osteopathic physician's findings based on a patient's medical, sexual, or reproductive history, age, physical findings, or diagnostic testing**. Earlier evaluation and treatment may be warranted based on an individual's medical history or physical findings.

(ii) For purposes of this subsection, "iatrogenic infertility" means an impairment of fertility by surgery, radiation, chemotherapy or other medical treatment affecting reproductive organs or processes.

(G) Every large group contract that provides medical, major medical or similar comprehensive-type coverage shall provide coverage for three [~~cycles of~~] **completed oocyte retrievals and** in-vitro fertilization [~~used in the treatment of infertility~~] **with unlimited embryo transfers from fresh or frozen oocytes or embryos from a covered retrieval, in accordance with the guidelines of the American College of Obstetricians and Gynecologists, using single embryo transfer (SET) when recommended and medically appropriate for the treatment of infertility**. Coverage may be subject to annual deductibles and coinsurance, including copayments, as may be deemed appropriate by the superintendent and as are consistent with those established for other benefits within a given contract. [~~For purposes of this subparagraph, a "cycle" is defined as either all treatment that starts when: preparatory medications are administered for ovarian stimulation for oocyte retrieval with the intent of undergoing in-vitro fertilization using a fresh embryo transfer; or medications are administered for endometrial preparation with the intent of undergoing in-vitro fertilization using a frozen embryo transfer.~~]

§ 33. Item (vii) of subparagraph (C) of paragraph 6 of subsection (k) of section 3221 of the insurance law, as amended by section 1 of part L of chapter 57 of the laws of 2019, is amended to read as follows:

(vii) Every large group policy delivered or issued for delivery in this state that provides medical, major medical or similar comprehensive-type coverage shall provide coverage for three cycles of in-vitro fertilization used in the treatment of infertility. Coverage may be subject to annual deductibles and coinsurance, including copayments, as may be deemed appropriate by the superintendent and as are consistent with those established for other benefits within a given policy. For purposes of this item, a "cycle" is defined as either all treatment that starts when: preparatory medications are administered for ovarian stimulation for oocyte retrieval with the intent of undergoing in-vitro fertilization using a fresh embryo transfer; or medications are administered for endometrial preparation with the intent of undergoing in-vitro fertilization using a frozen embryo transfer. **A policy may not impose any exclusions, limitations, or other restrictions on coverage of treatment of infertility based on a covered individual's participation in fertility services provided by or to a third party.**

§ 34. Subparagraph (G) of paragraph 3 of subsection (s) of section 4303 of the insurance law, as amended by section 2 of part L of chapter 57 of the laws of 2019, is amended to read as follows:

(G) Every large group contract that provides medical, major medical or similar comprehensive-type coverage shall provide coverage for three cycles of in-vitro fertilization used in the treatment of infertility.

Coverage may be subject to annual deductibles and coinsurance, including copayments, as may be deemed appropriate by the superintendent and as are consistent with those established for other benefits within a given contract. For purposes of this subparagraph, a "cycle" is defined as either all treatment that starts when: preparatory medications are administered for ovarian stimulation for oocyte retrieval with the intent of undergoing in-vitro fertilization using a fresh embryo transfer; or medications are administered for endometrial preparation with the intent of undergoing in-vitro fertilization using a frozen embryo transfer. **A policy may not impose any exclusions, limitations, or other restrictions on coverage of treatment of infertility based on a covered individual's participation in fertility services provided by or to a third party.**

§ 35. The social services law is amended by adding a new section 365-p to read as follows:

§ 365-p. Enrollment in the state health insurance exchange; surrogacy and egg donation. In addition to any triggering event that provides eligibility for a special enrollment period available to individuals for enrollment in a qualified health plan in the state health insurance exchange established pursuant to the federal Patient Protection and Affordable Care Act (P.L.111-148), the state health insurance exchange shall allow for:

1. the enrollment of a person acting as surrogate who is a party to a surrogacy agreement under part four of article five-C of the family court act at any time after the surrogacy agreement has been executed. Upon such enrollment, any qualified health plan in the state health insurance exchange shall ensure that coverage is effective on the date of application; and

2. the enrollment of an egg donor who is a party to a gamete donation matched agreement or a gamete donation agency agreement under part eight of article five-C of the family court act at any time after the gamete donation matched agreement or the gamete donation agency agreement has been executed. Upon such enrollment, any qualified health plan in the state health insurance exchange shall ensure that coverage is effective on the date of application.

§ 36. This act shall take effect immediately.