STATE OF NEW YORK

2122--A

2023-2024 Regular Sessions

IN SENATE

January 18, 2023

Introduced by Sens. GALLIVAN, BORRELLO, OBERACKER, ORTT, WEIK -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law, in relation to establishing the "donor-conceived person protection act"

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

Section 1. Short title. This act shall be known and may be cited as the "donor-conceived person protection act".

§ 2. Legislative findings and intent. The legislature acknowledges the importance of parents and donor-conceived persons knowing the medical history of individuals who have donated reproductive tissue to a reproductive tissue bank for purposes of an artificial insemination or assisted reproductive technology procedure and disseminating this history information to a recipient and donor-conceived person upon request, if any.

The legislature further acknowledges knowing the medical history of a donor will provide recipients with the necessary information to make informed decisions regarding the process of artificial insemination or assisted reproductive technology procedure and for donor-conceived persons to obtain essential medical information, which may reveal any relevant inheritable conditions.

The legislature finds that reproductive tissue banks have a duty to collect and verify medical history information provided by donors on donor self-reported medical histories and during the donor screening processes and to keep detailed records of such for use by recipients and donor-conceived persons, if any, prior to a procedure and in the future.

§ 3. The public health law is amended by adding a new section 4369-a to read as follows:

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

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§ 4369-a. Donor-conceived person protection act. 1. For the purposes of this section, the following terms shall have the following meanings:

(a) "Reproductive tissue bank" means any person or facility, which procures, stores, or arranges for the storage of or distributes and/or releases reproductive tissue to an insemination/implantation site or recipient for use in artificial insemination or assisted reproductive technology procedures. Reproductive tissue banks include, but are not limited to, semen banks, oocyte donation programs and embryo banks.

(b) "Reproductive tissue donor" means a person who provides reproductive tissue for use in artificial insemination or assisted reproductive procedures performed on recipients other than that person or that person's regular sexual partner, and includes known donors.

(c) "Donor reproductive tissue" means any tissue from the reproductive tract intended for use in artificial insemination or any other assisted reproductive technology procedure. This includes, but is not limited to, semen, oocytes, embryos, spermatozoa, spermatids.

(d) "Recipient" means a person who receives reproductive tissue from a donor.

(e) "Donor-conceived person" means a person purposely conceived through an assisted reproductive technology procedure or artificial insemination via the donation of donor reproductive tissue.

(f) "Known donor" means a reproductive tissue donor whose identity is known to the recipient.

2. Notwithstanding any other provision of law to the contrary, the commissioner shall ensure that reproductive tissue banks, licensed by the department, before providing a recipient with donor reproductive tissue, collect and verify medical information from any donor it procures reproductive tissue from and to disseminate such information to a recipient before a recipient receives such tissue, and to donor-conceived persons conceived with such tissue, if any, when such persons turn either: (a) eighteen years of age; or (b) earlier, upon consent of the recipient parent or guardian, consistent with this section.

3. A reproductive tissue bank donor shall:

(a) Provide the reproductive tissue bank information on their medical history, both individual and family, including first-degree and second-degree relatives, at the time of donation, including all available information setting forth conditions or diseases believed to be hereditary, and any drugs or medication being taken by the donor. The commissioner may require through regulation any additional medical history that may adversely affect the quality of reproductive tissue or impair the recipient's and/or the donor-conceived person's health;

(b) Provide, to the best of their ability, the names of any licensed medical professional or licensed health care practitioner that are primarily responsible for the medical care of such donor, within the preceding five years from the date of donation to the reproductive tissue bank;

(c) Provide the reproductive tissue bank written consent authorizing the reproductive tissue bank to obtain all relevant medical records held by any such licensed medical professional or licensed health care practitioner who are primarily responsible for the medical care of the donor in the preceding five years. Such records shall be tailored to the requirements of this section; and

(d) Provide written consent authorizing the release of medical information by the reproductive tissue bank, to include a waiver of the protection of medical history information pursuant to the Health Insurance Portability and Accountability Act of 1996 and their implementing

regulations, to potential recipients and their physicians, as well as to donor-conceived persons conceived with the donor's reproductive tissue.

4. A reproductive tissue bank procuring donor reproductive tissue shall:

(a) Provide a statement, signed by the donor, informing them of their obligations contained within the provisions of subdivision three of this section;

(b) Verify medical information provided by the donor as required pursuant to subdivision two of this section against the donor's medical records, if any;

(c) Disclose to recipients before providing them with donor reproductive tissue, and if applicable, donor-conceived persons conceived with the donor's reproductive tissue upon request when such persons either: (i) turn eighteen years of age; or (ii) earlier, upon consent of the recipient parent or guardian, all relevant medical records of such donor obtained pursuant to subdivision two of this section, as well as any other information required to be provided by the donor, except that if the reproductive tissue bank is unable to obtain such information from the donor's medical records, it shall note the reason why such records were unable to be obtained;

(d) Produce a standard form, identifying by reporting status, all medical information required to be provided by the donor under this section, utilizing verifiable information contained in the donor's medical records, and any unverifiable medical information provided by the donor to the reproductive tissue bank. Such form shall be made available at no charge to both the recipient and their physician, as well as any donor-conceived persons conceived with the donor's reproductive tissue upon request;

(e) Except in the case of known donors, redact any personal identifying information contained in the donor's medical records released to a recipient and/or donor-conceived persons conceived with the donor's reproductive tissue, if any. Such information shall include the donor's name, address, and any other information which would directly or indirectly identify the donor. Redacted records shall be made available at no charge to the recipient and/or donor-conceived persons conceived with the donor's reproductive tissue upon request;

(f) Donor-conceived persons conceived outside of the state of New York with reproductive tissue procured by a reproductive tissue bank located within the state of New York shall have access to the donor's medical records as allowed under this section.

(g) Reproductive tissue banks shall keep the donor's medical records required pursuant to subdivision two of this section for at least twenty-five years after the release of reproductive tissue for artificial inseminations or assisted reproductive technology procedures known to have resulted in a live birth.

(h) Should a donor-conceived person request disclosure of the relevant medical information when either: (i) they turn eighteen years of age; or (ii) earlier, upon consent of the recipient parent or guardian, the reproductive tissue bank, to the extent practicable, shall require from the reproductive tissue donor updated relevant medical records or written consent to procure such records.

(i) No donor reproductive tissue procured by a reproductive tissue bank located within the state of New York shall be sold or otherwise shipped or transferred to a recipient, their medical professional or health care practitioner or a reproductive tissue bank located in another state unless the reproductive tissue is accompanied by a signed

certification from the medical director of the reproductive tissue bank from which the donor reproductive tissue was procured that the reproductive tissue bank complied with the medical verification requirements of this section.

§ 4. This act shall take effect on the ninetieth day after it shall have become a law and shall apply to all donor reproductive tissue donated on and after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.