§ 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;

(2) the person acting as surrogate: (i) is a United States citizen or a lawful permanent resident, and (ii) has been a resident of New York state for at least six months if neither intended parent has been a resident of New York state for at least six months;

(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 a medical evaluation with a health care practitioner relating to the anticipated pregnancy. Such 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;

(5) the person acting as surrogate has given informed consent to undergo the medical procedures after the licensed health care practitioner has informed 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;

(6) the person acting as surrogate, and the spouse of the person acting as surrogate, if applicable, have been represented from the initiation of the contractual process and throughout the duration of the surrogacy agreement by 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 independent legal counsel of the person acting as surrogate, and the spouse of the person acting as surrogate, if applicable, is paid by the intended parent or parents, 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 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 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; and

(9) 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 is:

(i) a United States citizen or a lawful permanent resident; and

(ii) has been a resident of New York state for at least six months if the person acting as surrogate has not been a resident of the state of New York for at least six months;

(2) they have been represented from the initiation of the contractual process and throughout the duration of the surrogacy agreement by independent legal counsel of his, her or their own choosing who is licensed to practice law in the state of New York; and

(3) they are an adult person who is not in a spousal relationship, or any adults who are spouses together, or any adults who are intimate partners together, except an adult in a spousal relationship is eligible to enter into an enforceable surrogacy agreement without 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.

(c) 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.