

NYA AFF

New York Attorneys for Adoption & Family Formation

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New York Update: Child-Parent Security Act

In case you haven't heard the news, effective February 15, 2021, gestational surrogacy is now permitted by statute in New York! The new statute, the Child-Parent Security Act (CPSA), permits compensated gestational surrogacy and repeals New York's prior statute that declared surrogacy contracts void and unenforceable and criminalized compensated surrogacy.

Our New York Fellows - New York Attorneys for Adoption and Family Formation (NYA AFF) - were an integral part of drafting and advocating for the passage of the CPSA. For ten years, there were multiple drafts of the bill, numerous lobbying days at the Capitol, and advocacy by many partner organizations including RESOLVE, Men Having Babies, and Family Equality. The success of their advocacy took dedication, perseverance and never losing sight of the ultimate goal.

There are a number of elements to the CPSA that are unique including:

1. The establishment of legal criteria for gestational surrogacy agreements that provide the strongest protections in the nation for intended parents and surrogates, ensuring that all parties are provided information necessary to give informed consent at every step of the process;
2. The creation of a Surrogates' Bill of Rights, to ensure the absolute right of surrogates to make their own healthcare decisions, including whether to terminate or continue a pregnancy, and to ensure that surrogates have access to comprehensive health insurance and life insurance, as well as independent legal counsel of their choosing, all paid for by the intended parents; and
3. The creation of a streamlined process for establishing parentage for children born using assisted reproduction (when one or both of the intended parents is not biologically related to the child) and/or surrogacy (when either, both or neither of the intended parents are genetically related to the child).

Please note the residency requirements of the CPSA:

- A proceeding for a judgement of parentage for a child conceived through assisted reproduction may be filed in New York if at least one intended parent has been a New York resident for at least six months. If no intended parent is a New York resident, a proceeding can only be filed in New York if the child was born in New York within 90 days of the child's birth.

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- In order to enter into an enforceable surrogacy agreement under New York law, either:
 1. All intended parents must reside in New York for at least six months at the time the surrogacy agreement is signed (regardless of whether the surrogate also resides in New York); or
 2. If an intended parent resides outside of New York, the surrogate must be a New York resident for at least six months.

In addition, New York is the first state to require licensure for surrogacy programs¹ and the New York State Department of Health (DOH) announced its agency regulations (<https://regs.health.ny.gov/regulations/emergency>) and posted the application for licensure on its website. There was a marathon of telephone conferences on Friday and Saturday and New York attorneys who are members of NYA AFF provided comments and feedback to the DOH and the vast majority of revisions suggested by our members were accepted and incorporated into the regulations.

NYA AFF remains committed to best practices in assisted reproduction matters for all parties. While the CPSA and the implementing regulations were a huge step forward for New York, there are improvements that can be made. NYA AFF is continuing our work with the Governor's office, the legislature and DOH in hopes that a clean-up bill addressing some of the remaining issues in the statute can be passed during this legislative session.

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¹ The regulations apply to any person or entity arranging or facilitating transactions contemplated by a surrogacy agreement under part four of article 5-C of the family court act if: (a) the surrogacy program does business in New York State; (b) a person acting as surrogate is a 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.

