§1932. Gestational carrier agreement authorized

1. Written agreement. A prospective gestational carrier who is eligible pursuant to section 1931, her spouse if she is married and the intended parent or parents may enter into a written agreement that:

A. The prospective gestational carrier agrees to pregnancy by means of assisted reproduction; [PL 2015, c. 296, Pt. A, §1 (NEW); PL 2015, c. 296, Pt. D, §1 (AFF).]

B. The prospective gestational carrier and her spouse, if she is married, have no rights and duties as the parents of a child conceived through assisted reproduction; and [PL 2015, c. 296, Pt. A, §1 (NEW); PL 2015, c. 296, Pt. D, §1 (AFF).]

C. The intended parent or parents will be the parents of any resulting child. [PL 2015, c. 296, Pt. A, §1 (NEW); PL 2015, c. 296, Pt. D, §1 (AFF).]

[PL 2015, c. 296, Pt. A, §1 (NEW); PL 2015, c. 296, Pt. D, §1 (AFF).]

2. Intended parents. The intended parent or parents must be parties to a gestational carrier agreement.

[PL 2015, c. 296, Pt. A, §1 (NEW); PL 2015, c. 296, Pt. D, §1 (AFF).]

3. Enforceable. A gestational carrier agreement is enforceable only if it meets the following requirements.

A. The agreement must be in writing and signed by all parties. [PL 2015, c. 296, Pt. A, §1 (NEW); PL 2015, c. 296, Pt. D, §1 (AFF).]

B. The agreement must require no more than a one-year term to achieve pregnancy. [PL 2015, c. 296, Pt. A, §1 (NEW); PL 2015, c. 296, Pt. D, §1 (AFF).]

C. At least one of the parties must be a legal resident of the State. [PL 2015, c. 296, Pt. A, §1 (NEW); PL 2015, c. 296, Pt. D, §1 (AFF).]

D. The agreement must be executed before the commencement of any medical procedures other than the medical evaluations required by section 1931 and, in every instance, before transfer of embryos. [PL 2015, c. 296, Pt. A, §1 (NEW); PL 2015, c. 296, Pt. D, §1 (AFF).]

E. The gestational carrier and the intended parent or parents must meet the eligibility requirements of section 1931. [PL 2015, c. 296, Pt. A, §1 (NEW); PL 2015, c. 296, Pt. D, §1 (AFF).]

F. If any party is married, the party's spouse also must be required to execute the agreement. [PL 2015, c. 296, Pt. A, §1 (NEW); PL 2015, c. 296, Pt. D, §1 (AFF).]

G. The gestational carrier and the intended parent or parents must be represented by independent legal counsel in all matters concerning the agreement and each counsel shall affirmatively so state in a written declaration attached to the agreement. The declarations must state that the agreement meets the requirements of this chapter and must be solely relied upon by health care providers and staff at the time of birth and by the Office of Data, Research and Vital Statistics for birth registration and certification purposes. [PL 2015, c. 296, Pt. A, §1 (NEW); PL 2015, c. 296, Pt. D, §1 (AFF).]

H. The gestational carrier and each intended parent must sign a written acknowledgment of having received a copy of the agreement. [PL 2015, c. 296, Pt. A, §1 (NEW); PL 2015, c. 296, Pt. D, §1 (AFF).]

I. The signature of each party to the agreement must be notarized, acknowledged or attested by a person authorized to take oaths in accordance with the laws of the jurisdiction where it is executed. [PL 2015, c. 296, Pt. A, §1 (NEW); PL 2015, c. 296, Pt. D, §1 (AFF).]

J. The agreement must expressly provide that:

(1) The gestational carrier:

(a) Must undergo assisted reproduction and attempt to carry and give birth to any resulting child;

(b) Has no claim to parentage of all resulting children to the intended parent or parents immediately upon the birth of the child or children regardless of whether a court order has been issued at the time of birth; and

(c) Must acknowledge the exclusive parentage of the intended parent or parents of all resulting children;

(2) If the gestational carrier is married, her spouse:

(a) Must acknowledge and agree to abide by the obligations imposed on the gestational carrier by the terms of the gestational carrier agreement;

(b) Has no claim to parentage of any resulting children to the intended parent or parents immediately upon the birth of the children regardless of whether a court order has been issued at the time of birth; and

(c) Must acknowledge the exclusive parentage of the intended parent or parents of all resulting children;

(3) The gestational carrier has the right to use the services of a health care provider of her choosing to provide her care during her pregnancy;

(4) The intended parent or parents must:

(a) Be the exclusive parent or parents and accept parental rights and responsibilities of all resulting children immediately upon birth regardless of the number, gender or mental or physical condition of the child or children; and

(b) Assume responsibility for the financial support of all resulting children immediately upon the birth of the children; and

(5) All parties must provide records related to the medical evaluations conducted pursuant to section 1931, subsection 2, paragraph A. [PL 2015, c. 296, Pt. A, §1 (NEW); PL 2015, c. 296, Pt. D, §1 (AFF).]

[PL 2015, c. 296, Pt. A, §1 (NEW); PL 2015, c. 296, Pt. D, §1 (AFF).]

4. Reasonable expenses. Except as provided in section 1939, a gestational carrier agreement may provide for payment of reasonable expenses, which, if paid to a prospective gestational carrier, must be negotiated in good faith between the parties.

[PL 2015, c. 456, §1 (AMD).]

5. Decision of gestational carrier. A gestational carrier agreement may not limit the right of the gestational carrier to make decisions to safeguard her health.

[PL 2015, c. 296, Pt. A, §1 (NEW); PL 2015, c. 296, Pt. D, §1 (AFF).]

SECTION HISTORY

PL 2015, c. 296, Pt. A, §1 (NEW). PL 2015, c. 296, Pt. D, §1 (AFF). PL 2015, c. 456, §1 (AMD).

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