

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1635 (Delegate Pena-Melnyk, *et al.*)
Judiciary and Health and Government
Operations

Maryland Department of Health - Birth Registration - Gestational Carriers

This bill requires, if applicable, that a copy of the order of the court establishing parentage be attached to a birth certificate. In any case that involves a “gestational carrier” in which parentage is determined by a court of competent jurisdiction, the court order must be attached to the child’s birth certificate. On receipt of the birth certificate and order of the court establishing parentage, the Division of Vital Records (DVR) in the Maryland Department of Health must immediately register the certificate of birth in accordance with the order of the court.

Fiscal Summary

State Effect: None. The bill generally codifies existing practice.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: “Gestational carrier” means a women other than an intended parent or gamete donor who agrees to become pregnant for an intended parent with the intention of gestating and delivering the child of the intended parent.

In any case that *does not involve a gestational carrier* in which parentage of a child is determined by a court of competent jurisdiction, the name of the parent who did not give

birth to the child and surname of the child must be entered on the certificate of birth in accordance with the finding and order of the court.

In any case that *involves a gestational carrier* in which parentage is determined by a court of competent jurisdiction, the birth certificate must include (1) an indication that the delivery of birth was by a gestational carrier and (2) the identity of the intended parents. An order of the court establishing parentage must be attached to the birth certificate.

Current Law: Within five calendar days after a birth occurs in an institution, en route to the institution, or outside an institution with an attending clinician, the administrative head of the institution or the attending clinician (or their designee) must (1) prepare a birth certificate on a form provided by the Secretary; (2) secure required signatures on the certificate; and (3) file the certificate. The attending physician, physician assistant, nurse practitioner, nurse midwife, or attending clinician must provide the date of birth and medical information required.

When an individual who is not married gives birth to a child in an institution or outside an institution with an attending clinician, the administrative head of the institution or the attending clinician (or their designee) must (1) provide an opportunity for the child's parents to complete a standardized affidavit of parentage; (2) provide the mother written information prepared by the Child Support Administration concerning the benefits of having the parentage of the child established, including the availability of child support enforcement services; and (3) forward the completed affidavit to DVR. DVR must make the affidavits available to the parents, guardian of the child, or a child support enforcement agency upon request. The name of the child's other parent may not be entered on the certificate without an affidavit of parentage signed by the mother and the person to be named on the certificate as the other parent. If the parent who did not give birth to the child is not named on the certificate of birth, no other information about that parent may be entered on the certificate.

If the child's mother was married at the time of either the conception or birth or between conception and birth, the name of the mother's spouse must be entered on the certificate as the child's other parent.

Background: While there is no statute governing gestational carriers in the State or related records, DVR advises that, under current practice, the individual who gives birth to a child is automatically listed on the child's birth certificate. The National Center for Health Statistics collects information from birth certificates regarding the individual who gives birth to the baby and information regarding the delivery of the baby. Once relevant forms and information regarding the baby's intended parentage are collected from the (1) institution where the baby was born; (2) individual who gave birth to the baby; and

(3) baby's intended parents, DVR seals the original birth certificate and issues a new birth certificate listing the intended parents.

Surrogacy versus Gestational Carrier

According to the American Society for Reproductive Medicine (ASRM), a gestational carrier is a woman who carries a pregnancy for another and a surrogate is a woman who donates her egg and carries a pregnancy for another.

Surrogacy in Maryland

Under Maryland law, the status of surrogacy contracts is unclear as there is little statutory regulation of them. In *In re Roberto d.B.*, 399 Md. 267 (2007), the Court of Appeals held that the name of a genetically unrelated gestational host of a fetus, with whom the genetic father contracted to carry in vitro fertilized embryos to term, was not required to be listed on the birth certificate when a child is born as a result. The court also noted that "surrogacy contracts, that is, payment of money for a child, are illegal in Maryland" under § 3-603 of the Criminal Law Article, which prohibits the sale of a minor and §5-3B-32 of the Family Law Article, which prohibits the payment of compensation in connection with an adoption.

The majority of surrogacy conducted in the United States involves the use of a gestational carrier in which a woman agrees to have a couple's fertilized embryo (or a donated embryo) implanted in her uterus and carry the pregnancy for the intended parents. A gestational carrier has no genetic relationship to the child. According to ASRM, use of a gestational carrier is indicated for women who lack a uterus, have uterine abnormalities, or have significant medical contraindications to pregnancy. In most cases, the intended parents compensate the gestational carrier for her services and pay the expenses of the pregnancy.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 1062 (Senator Kelley) - Finance.

Information Source(s): Maryland Association of County Health Officers; Judiciary (Administrative Office of the Courts); Maryland Department of Health; Department of Human Services; American Society for Reproductive Medicine; Department of Legislative Services

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