

D-R-A-F-T
Act 156
Uniform Law on Parentage (ULP)
Birth Heritage Permitted Interaction Group (BHPIG)
Policy Concept Report

Policy Concept: The Birth Heritage Permitted Interaction Group (BH PIG) was established to discuss the policy concept of whether children born from surrogates and assistive reproductive technologies (ART) should have access to identifying information about their surrogates and/or gamete donor(s) who are their genetic but not legal parents.

Background: This concept derives from more than 50 years of research and development in state policy that opened sealed adoption records and allowed adult adoptees access to identifying information about their genetic parents. Concurrently, the field of genetics identified the links between genes and myriad medical diseases, ethnicity, and personality traits. Further, direct-to-consumer DNA tests and online genetic matching databases has resulted in the defacto elimination of anonymity when matches are made between adult adoptees and genetic parents and/or genetic family. However, this informal method of deriving birth heritage information is not always accurate and complete, depending upon which genetic family members are matched.

Adoption was initially created to provide legal parents for children who could not be parented by their genetic parents. The advent of surrogacy and ART similarly creates a family of genetic and non-genetic parents. There is acknowledgement by the BH PIG that children of surrogacy and ART should have access to health and medical information from their surrogates and/or gamete donors. For some legal parents, such information is provided at the time of surrogate and/or gamete selection. However, standard ART practice allows anonymity to gamete donors within their contract with the gamete clinic, and donor recipients and/or legal parents are not provided donor's identity. This means that a child of a surrogate or ART may have one genetic parent as their legal parent or no genetic parents but two legal parents. These children then face similar voids in birth heritage information as adoptees who are raised by legal, non-genetic parents.

Subsequent to the 2023 introduction in the Hawaii legislature of the ULP, the National Commission on Uniform State Laws provided an update to their 2017 draft. The update recognizes the need for sharing of information between donors and their genetic children. The update is attached to this report.

Points for Discussion: BH PIG offers the following comments on the policy concept

Most gamete clinics do not share identifying information with donor recipients nor their genetic children. Requiring sharing of this information could reduce the number of donors.

Same gender couples face additional barriers to creating families through surrogacy and gamete donors.

Non-identifying information including race, ethnicity, health status and medical conditions of surrogates and gamete donors should be released to legal parents and genetic children of surrogates and gamete donors.

Gamete clinics should request updates to health status and medical conditions from gamete donors at regular intervals until the genetic child achieves age 18 and/or upon request from child's legal parents.

Creating families through surrogacy and assistive reproductive technology present similar issues for these children as children adopted by non-genetic parents who are not provided birth heritage information about their genetic parents.

Allowing children from surrogates and gamete donors access to identifying information upon age 18 and upon request, aligns with current Hawaii adoption laws allowing access to sealed adoption records.

Recommendations for Discussion:

Birth records completed at the time of birth by hospital, birthing center, or at-home birth shall record genetic parents' identifying information, including race, ethnicity, and health status of birthing parent and genetic parent(s), as practicable, for preparation of original birth certificates by Department of Health.

An amended birth certificate reflecting legal parents shall be prepared by Department of Health upon receipt of voluntary attestation from the birthing parent, genetic parent, or upon court order from family court.

Hospitals, birthing centers, and home-births shall use a standard form approved by Department of Health, for collection of birth record information, which shall be maintained by Department of Health with the original birth certificate.

Persons who are born from a surrogate and/or donor gamete shall, upon age 18 and submission of written request to the Department of Health, be provided a copy of their original birth certificate and a copy of the original hospital or birthing center record submitted to the Department of Health.