

**Updates to “Concepts” proposed by the Legal Parentage PIG
for discussion at the June 14, 2024 meeting of the Act 156 Task Force**

At the May 24, 2024 meeting, Task Force members raised questions regarding the Legal Parentage PIG’s proposed concepts and recommendations. The PIG’s May 24, 2024 report is available [here](#), and is also attached to this update. This update responds to those questions and concerns.

A. Denial of parentage:

Background: Under the 2017 UPA, an acknowledgment of parentage is void if, at the time of signing, an individual other than the person seeking to establish parentage is a presumed parent, unless a “denial of parentage” is in a signed record filed with the State. The denial of parentage procedure first appeared in the 2002 UPA, but only allowed a “presumed father” to file a denial.

Although the PIG recommended adopting the 2017 UPA’s policy allowing presumed parents to utilize the voluntary acknowledgment/establishment of parentage process (referred to as “VEP” in Hawai‘i), the PIG originally **did not** recommend adopting the 2017 UPA’s policy regarding denials of parentage.

During the May 24, 2024 meeting, concerns were raised with respect to deviating from the 2017 UPA’s denial of parentage policy.

Findings: The PIG found that 26 states (including Hawai‘i) and the District of Columbia do not have a denial of parentage/paternity process, but 24 states have some form of such a process. The states that do have such a process however, do not necessarily follow the UPA. Many are limited to situations where the mother was married at or between the time of birth and conception and she attests that the person who voluntarily seeks to be named as the father is the biological father, not her husband or ex-husband. Of the 15 states which adopted either the 2002 or 2017 UPA, all but Alabama, California, and Connecticut have chosen to adopt the denial of parentage process. Maine, Rhode Island, Vermont, and Washington have adopted the gender-neutral provision in the 2017 UPA.

The PIG also inquired with the Department of Health (“DOH”) to determine whether implementing a denial of parentage process as part of VEP would be feasible. The supervisor of registration for DOH relayed that his concerns with adopting such a process are substantial enough that he would recommend that denials of parentage be addressed judicially instead. Specifically, he estimated that the DOH, which is already short-staffed, would require two new “higher level” clerks with suitable analytical skills to review denials and VEP acknowledgments and determine whether parentage has been established. He also noted that there is no physical space to house these clerks.

In addition, CSEA notes that a simple denial of parentage process would be very helpful because they receive a lot of cases where one person wants to deny parentage and another wants to establish parentage, but nonetheless, the parties have to go to court.

Recommendation: The PIG recognizes the utility in adopting the 2017 UPA’s denial of parentage provisions, and that this process appears to be workable in other states which have adopted it. However, given the DOH’s concerns, the PIG recommends that the Task Force adopt the 2017 UPA’s denial of parentage provisions, **but with the caveat** that such denials be resolved through the uncontested parentage procedure previously proposed by the PIG, not through the DOH. Under this proposal, a birthing parent, the person who seeks to voluntarily establish parentage, and the person seeking to deny parentage would all submit affidavits to the court, not the DOH, and the court, without a hearing, could establish parentage.

If the Task Force is in agreement, the PIG will draft language to allow for denials of parentage.

B. The effect on Assisted Reproductive Technology (“ART”) agreements:

Background: At the May 24, 2024 meeting, the PIG discussed its recommendation to adopt an uncontested parentage proceeding by which purported parents could submit affidavits directly to court and the court could adjudicate parentage without a hearing. This process would be largely intended to benefit “professed parents” i.e. individuals or any sex or gender who are not genetically related to the child or married to the birthing parent and who live with the child, hold them out as their own, and agree to be legally recognized as the parent of the child. “Professed parents” would not include any relative of the birthing parent and could not assert parentage if the identity of the possible genetic parent is known.

At the meeting, a concern was raised that allowing professed parents to utilize an uncontested parentage procedure could discourage unmarried individuals who conceive a child using ART from executing an ART agreement, because they can use the uncontested parentage procedure instead.

Findings and Recommendation: The PIG does not think that allowing professed parents to establish parentage through an uncontested judicial procedure will discourage the execution of ART agreements. Note that a couple using ART could only be “professed parents” if they are also unmarried and using an anonymous donor. Under § -PP of the current draft bill, consenting to parentage using an ART agreement appears to be *less* stringent than the proposed “professed parent” definition and process. *See* § -PP(a) (“Except as otherwise provided in subsection (b), the consent described in section -OO shall be in a record signed by an individual giving birth to a child conceived by assisted reproduction and an individual who intends to be a parent of the child.”). Individuals who are “intended parents” of children conceived through ART can also use the VEP process at the time of birth, which is less onerous than going through the uncontested judicial process after birth.

That said, if the Task Force is still concerned, the definition of “professed parents” could simply be amended to add that “**a professed parent does not include the parent of a child conceived via assisted reproduction.**”

C. Other recommended amendments:

Following discussion at the May 24, 2024 meeting, the PIG also recommends the following amendments to the draft bill:

- §-H(a)(1)(C), which establishes when a former spouse of the birthing parent is a “presumed parent,” should be revised to read: “(C) The individual and the individual who gave birth to the child married each other after the birth of the child, regardless of whether the marriage is or could be declared invalid, the individual at any time asserted parentage of the child, and:
(i) the assertion is **in an acknowledgment of parentage as defined in Part IV that is filed with the department of health;** or
(ii) the individual agreed to be and is named as a parent of the child on the birth certificate of the child; or
- §-K(a), which allows for the expedited establishment of parentage through VEP, should be amended to read: “(a) To expedite the establishment of parentage, each public and private birthing hospital or center, the child support enforcement agency, **the midwives authorized by the department of health,** and the department of health shall provide parents the opportunity to voluntarily acknowledge the parentage of a child during the period immediately prior to or following the child’s birth. **However, an individual who is a presumed parent under § -H(a)(1)(C) or § -H(a)(2) may only submit their voluntary acknowledgement directly to the department of health.**”

This revision reflects that a person does not become a “presumed parent” under § -H(a)(1)(C) or § -H(a)(2) until some time after the birth of the child.

- §-K(a) should also be amended to state: “The provision by designated staff members of the facility of the information required by this section shall not constitute the unauthorized practice of law. **Birthing facility staff, midwives authorized by the department of health, and department of health staff shall not be subject to civil, criminal, or administrative liability for a negligent act or omission relative to the accuracy of the information provided or for filing the declaration with the appropriate state or local agencies.**”

These recommended amendments are reflected in the PIG’s updated version of the draft bill, attached.

Attachments:

- Legal Parentage PIG’s May 24, 2024 report
- Spreadsheet of states with “denial of parentage” provisions
- Legal Parentage PIG’s June 6, 2024 version of the draft bill