Marriage: A Requirement for Pregnancy by Assisted Reproduction Therapy

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A change in Indiana law to require marriage as a condition for motherhood through assisted reproduction therapy and to criminalize unauthorized artificial reproduction has been introduced in the Indiana General Assembly’s Health Finance Commission.¹

Under the proposed legislation every woman seeking to become a mother through assisted reproduction therapy must file for a “petition for parentage” in her local county probate court. The proposed law would also require that the “intended parents” must be married to each other and that both spouses must be parties to the action to establish parentage.

The petition to establish parentage must be made under oath and specify the name, age, and place of residence of each petitioner; place and date of marriage of the petitioners; the name and place of residence, if known, of the donor or donors; the name and address of the licensed child placement agency that performed the assessment; the name and address of the physician who performed the medical procedure that resulted in the pregnancy of the child who is subject to the parentage action; and the type of assisted reproduction procedure that was used. The petition must also specify whether a petitioner has been convicted of a felony or a misdemeanor relating to the health and safety of children.

In addition, the proposed legislation will require the “intended parents” to obtain an assessment from a licensed child placement agency in the intended parents’ state of residence before the intended parents may commence assisted reproduction. This assessment must include the following information among other requirements: (1) the intended parents’ purpose for the assisted reproduction; (2) the fertility history of the intended parents, including the pregnancy history and response to pregnancy losses of the woman; (3) and a verification and evaluation of the intended parents’ marital relationship. After completing the assessment, and if the child placement agency approves the “intended parents” to commence the assisted reproduction procedure, the agency shall issue a certificate that the “intended parents” have satisfactorily completed the assessment and are ready to commence assisted reproduction.

The proposed law would also place restrictions and requirements on all physicians who provide an assisted reproduction technology procedure. Specifically, a physician may not commence an assisted reproduction technology procedure that may result in a child being born until the “intended parents” of the child have received a certificate of satisfactory completion of the assessment required from a licensed child placement agency. However, a physician and the intended parents may proceed with testing, gamete

retrieval, and embryo creation before obtaining the required certificate. Additionally, before commencing assisted reproduction with an “intended parent,” the physician who will perform the procedure shall obtain consent of each of the “intended parents.”

After a viable pregnancy has been achieved by artificial reproduction, the physician who performed the artificial reproduction procedure shall issue a certificate to the “intended parents” stating: (1) the child was conceived under the care of a physician; (2) the type of artificial reproduction procedure that was used; (3) whether the donor is known or anonymous; and (4) whether the physician is aware of any compensation being paid to the donor.

Both an “intended parent” and physician are subject to criminal penalties under the proposed law. As drafted, the new law provides that an intended parent who knowingly or intentionally participates in an artificial reproduction procedure without establishing parentage through the probate court procedure commits unauthorized artificial reproduction, a Class B Misdemeanor. The law also would allow for criminal charges against a physician who knowingly or intentionally fails to obtain the required consent of each of the intended parents. Such a physician could be charged with unauthorized practice of artificial reproduction, a Class B Misdemeanor. The law would also make it a Class A Misdemeanor if an individual knowingly or intentionally makes a materially false or misleading statement with regard to any of the information required under the statute.

Is the proposed legislation simply an attempt to regulate the provision of health care services? Is it intended to clarify the legal rights of parents? Is it intended to protect the children who result from infertility treatments? Or, is it a means to prevent single people from becoming parents without engaging in sexual intercourse? Whatever the motive, the proposed legislation mandating that “intended parents” of a child produced by assisted reproduction therapy be married to each other is sure to raise constitutional, privacy and ethical debates, as well as potential legal challenges.

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