

Questions and Answers Regarding 21-ADM-01, *Acknowledging Parentage as the First Step in Providing Child Support Services*

Can they sign an AOP?		
If the birth parent is...	And the other parent is...	
	...the Alleged Parent of a child conceived naturally	...the Intended Parent of a child conceived using assisted reproduction
... Married at the time of the birth	No	Yes
... Unmarried at the time of the birth	Yes	Yes

General

Q: Who is an “alleged parent”?

A: The person who may be the genetic parent of a child conceived naturally (i.e., through sexual intercourse) but who has not yet been legally declared to be the parent.

Q: Does the term “alleged parent” effectively replace “putative father”, and should we use the former phrase when conversing with the public in the interest of sensitivity to non-traditional family units?

A: Yes, “alleged parent” replaces the former term “putative father” or “alleged father” and should be used by those working in the Child Support Program to the greatest extent possible.

Q: Who is an “intended parent”?

A: As it relates to the Acknowledgment of Parentage (AOP), an intended parent is an individual who intends to be legally bound as the parent of a child resulting from assisted reproduction.

Q: What does it mean if a child is conceived using assisted reproduction (AR)?

A: The child was conceived by a method other than sexual intercourse, such as:

- intrauterine or vaginal insemination;
- donation of gametes;
- donation of embryos;
- in vitro fertilization and transfer of embryos; or
- intracytoplasmic sperm injection.

Q: What is a gamete donor?

A: A sperm or egg donor.

Q: Does the AOP have reciprocity in other states?

A: Yes. The AOP has the same force and effect as a court finding of parentage and is entitled to full faith and credit in other states.

Who Can Sign

Q: If the birth parent is married but legally separated during the pregnancy or at the time of birth, can the parents sign an AOP?

A: Only if the child was conceived using AR, then the intended parent may sign the AOP regardless of whether the parents are married at the time of the birth. If the child was conceived naturally, then the parents **cannot** sign an AOP because the birth parent is still legally married at the time of the birth.

Q: If the birth parent is married, but conceived a child through AR with someone other than their spouse, can the birth parent and the intended parent sign an AOP?

A: No. Pursuant to Public Health Law § 4135-b(1)(d)(i), an AOP is void if, at the time of the signing, a person other than the signatories is a presumed parent of the child under section twenty-four of the domestic relations law. The birth parent and the intended parent would need to establish parentage through a court proceeding.

Q: Why does the AOP include the questions “were you married at the time of birth” and “are you the biological/genetic father of the child”?

A: These questions are required for federal data reporting purposes only, and the answers do not determine whether a parent may sign an AOP.

Q: If the question “were you married at the time of birth?” is checked **yes**, can the person sign the AOP?

A: Married persons who conceived a child using AR may choose to sign an AOP. If the child was conceived naturally, they cannot sign an AOP.

Q: If the question “are you the biological/genetic father of the child?” is checked **no**, can the person sign the AOP?

A: Yes, if the person signing is the intended parent of a child conceived using AR.

Q: If the question “are you the biological/genetic father of the child?” is checked **yes**, can the person sign the AOP?

A: Yes, if the person signing is the biological/genetic father of a child conceived naturally by unmarried parents, or the biological/genetic father of a child conceived using AR.

Q: If there is a surrogacy agreement in place, can the parents still choose to sign an AOP?

A: No.

Q: Under the “Situations When the LDSS-5171 May Not Be Signed” section of the ADM, the sixth bullet reads “[a] person signing the LDSS-5171 asserts that they have parental rights under FCA 581-303 due to an assisted reproduction agreement, but the child was not conceived through assisted reproduction.” The term “assisted reproduction agreement” isn’t referenced anywhere else in this ADM, nor is it defined in the program implication terms. Was that actually supposed to read “surrogacy agreement,” or no?

A: Pursuant to the statute, a record that indicates the mutual agreement of the intended parents to conceive and parent a child together is sufficient to establish the legal parentage of the resulting child born from AR (FCA §§ 581-303, 581-304).

The circumstance referred to in the bulleted list comes directly from PHL § 4135-b(1)(d)(vi), and refers to the situation wherein a person asserts legal parentage pursuant to such an agreement to conceive a child through AR, but in fact the child was conceived naturally.

Q: Will same-sex couples, whether married or unmarried, be able to complete the new AOP?

A: Yes.

Q: Can someone other than hospital staff witness the signing of the AOP?

A: Yes, any two people who are not related to either parent can witness the signatures.

Q: Can an unmarried birth parent and a person who is not the biological/genetic parent of the child sign an AOP for a child conceived naturally?

A: No.

Q: What responsibility does the CSEU have to know if the parents are signing the AOP under the correct circumstances?

A: It is the responsibility of assisting staff to understand and explain to parents the circumstances under which the parents can sign an AOP; CSEU staff are not legally responsible for verifying the circumstances described to them by the parents.

Q: If children born to married parents are presumed to be the product of the marriage, then why would a married couple sign an AOP if they used assisted reproduction?

A: New York is one of only a few states that recognize intended parents as legal parents without adjudication (i.e., a court order). If a family wants to ensure their parental rights are protected outside of New York, then they may sign an AOP at their discretion.

Q: Can parents sign an AOP to establish parentage in lieu of adoption if an unmarried couple used AR to conceive?

A: Yes. Signing an AOP has the same force and effect as a court determination of parentage and eliminates the need for a second-parent adoption.

Forms

Q: Will the new AOPs be processed the same way as the current ones?

A: Yes. The hospital will send the AOP to the local registrar with the birth certificate paperwork. After the AOP is processed, the local birth registrar will send a certified copy to the New York State Department of Health (NYSDOH) or the New York City Department of Health and Mental Hygiene (NYCDHMH), and to the PFR. NYSDOH or NYCDHMH will mail a certified copy of the AOP to each parent, and to the gamete donor if named with the SSN redacted.

Q: Can the AOP be submitted in languages other than English?

A: No, the translations to other languages are for the user's reference only. The English version must be submitted.

Q: Is there an actual form number that corresponds to the "oral and written notice required pursuant to PHL 4135-b(1)(f) of their rights and the consequences of signing the LDSS 5171"?

A: The ADM does not change the requirements or mechanics of providing oral and written notice to individuals who seek to acknowledge parentage through this voluntary process. Pages 1 through 4 of the LDSS-5171 serve as the written notice for the Acknowledgment of Parentage form which is contained on the 5th and 6th pages of the document. Oral notice, which must be provided by the CSEU prior to the signing of the form, may be through the use of audio or video equipment. An updated video is expected to be available by April 2021. Until that time, the current video will remain available on www.childsupport.ny.gov.

Child Support Services Questions

Q: Will a surrogacy agreement appear on the Putative Father Registry?

A: The agreement itself will not appear on the Putative Father Registry (PFR). However, the court is required to provide notice to the PFR if a judgment of parentage is issued for a child born pursuant to a surrogacy agreement if the child is under 18.

Q: If a couple is unmarried and there is no AOP recorded, should we file a parentage petition?

A: Yes, unless parentage has been established by a record of mutual agreement to conceive and parent a child through AR, or by a surrogacy agreement.

Q: If we receive a referral for TANF for an absent parent of a child conceived by same-sex parents, can we legally seek to establish an order of support from the absent same-sex parent? How would we proceed to establish parentage if there isn't already a legal agreement of parentage between the parents?

A: Yes. As with any child support application or referral, you must first determine if parentage needs to be established before you may proceed to establish support. If the couple was married at the time of the birth, then parentage is established, and you may proceed to support establishment. If they were not married, then you must check the PFR for an AOP, ask the custodial parent if there is a record of mutual agreement to conceive and parent a child through AR, or a surrogacy agreement. If not, you must file a petition to establish parentage.

Q: It appears that scenarios where parentage is established through an AOP executed by a birth mother and a second female parent (through the efforts of the CSEU) are not counted toward a district's paternity establishment percentage (PEP). Is there some other performance measurement that would encompass this scenario so that "credit" for establishment of parentage isn't lost?

A: While certain parentage establishment scenarios will not be PEP eligible under the current federal definition for that performance measure, all other federal performance measures will apply in the provision of child support services to the family.

Q: Please confirm where in Local Correspondence the new parentage petitions are located and status coding. Will it be available through document generation Family Court module, or placed in the State subfolder? Will we have to set the P200 status manually on all paternity petitions?

A: The new parentage petitions are located in the State subfolder of the of the Local Correspondence folder. CSEUs will only need to set the P200 00 status manually when using the new parentage petitions, not for paternity petitions.

Q: Will there eventually be a system update to automatically set the status group when paternity petitions are filed or is the need to manually set the status going to be permanent?

A: **Paternity** petition generation has not changed. Paternity petitions generated by selecting the NYS Family Court tab of the ASSETS Document Generation Module will still automatically set the P status code when saved to the Document Log, as before. Only the new **parentage** petition, selected through Local Correspondence, will require setting the P status code manually.

Regarding the portion of your question asking about future systems changes, we are currently assessing the associated systems work as part of a prioritization process to determine whether enhancements can be offered in a future release of ASSETS.

Q: The log is ONLY for AR cases, correct?

A: The log is only for recording case information (list the NY Case Identifier and the name of each party) when **parentage** petitions are filed. This would include assisted reproduction (AR) cases where there is a birth parent and intended parent, as well as cases where a surrogate is involved.

Parental Rights & Responsibilities

Q: If a couple gave birth using gametes from a donor, does signing an AOP relinquish the rights of the donor?

A: By definition, a donor cannot be an intended parent, and does not have any parental rights or responsibilities with regard to the child conceived.

Q: Does a gamete donor have to take action to relinquish their responsibilities as a parent?

A: There must be a record acknowledging the donation signed by the donor and the gestating parent.

Q: Why is there a field for the address of the gamete donor on the AOP?

A: It is a requirement of the new law that the name and address of any known gamete donors be included on the AOP. NYSDOH or NYCDHMH will then mail a copy of the AOP (with Social Security numbers redacted) to the listed gamete donors.

Q: If a surrogate is identified as the birth parent on the birth certificate, does that make her legally responsible for the child even if she wasn't having the baby for herself?

A: The surrogate is never legally responsible for the child, as a parent, pursuant to a surrogacy agreement. The surrogate will be placed on the original birth certificate as the birth parent, however that birth certificate will be sealed immediately and an amended birth certificate naming the intended parents under the surrogacy agreement will be issued.

Process Questions

Q: What if the other parent wants to sign the AOP but the birth parent does not want them to?

A: The other parent will likely have to petition the court to have parentage established.

Q: When parents are using the AOP to add the other parent to the birth certificate and change the baby's name at a later time after the birth, which last name goes in the *Last name* field?

A: The *Last name on original birth certificate* should go in that field, and the new last name should go in both the *Last name* and *New last name* fields.

Child

First name Reilly	Middle name Gray	Last name Smith
Gender <input type="checkbox"/> Female <input type="checkbox"/> Male <input checked="" type="checkbox"/> Non-Binary/other	Date of birth (MM/DD/YYYY) 03 / 25 / 2021	
Facility of birth Albany Medical Center	City of birth Albany	County/borough of birth Albany
If the child's birth certificate was already filed and you wish to change the child's last name, complete the following section:		
Last name on original birth certificate Johnson	New last name Smith	

Q: When the child changes their last name on the AOP, do they have to change their name via the court, too?

A: No. Public Health Law allows the surname of the child to be changed to conform with the last name of the non-birth parent listed on the AOP (i.e., the last name of either parent, or any combination thereof), without court intervention. See PHL §§ 4135-b, 4138(1)(e).

Q: What if the parents sign an AOP in the hospital then decide they do not want it submitted?

A: Once an AOP is signed, it must be processed by the hospital and submitted to the local registrar. The parents may file a petition to vacate within the allowable timeframes if they wish to rescind.

Q: What is the time frame for an AOP to be signed after the birth of the child? Does it have to be within the first year?

A: There is no time limit—an AOP can be submitted to the local birth registrar, or to the NYCDHMH, at any time following the birth.

Q: Can a parent sign an AOP while incarcerated?

A: Yes, as long as there are two people unrelated to the parent available to witness the signature.

Q: If a child is 18 years of age or older and their last name is not being changed, is the child's consent needed to file an AOP?

A: No.