



Future Choices II

An Update on the Legal, Statutory, and Policy Landscape
of Assisted Reproductive Technologies

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Introduction and summary

In 2007 the Center for American Progress released its report “Future Choices: Assisted Reproductive Technologies and the Law,” which described a range of assisted reproductive technologies and their legal and regulatory background. The report also examined the policy implications of the largely unregulated field of reproductive technology, especially in the context of traditional feminist positions on reproductive rights. If a woman has the ultimate right to decide whether or not to bear a child when she is pregnant, for instance, does that principle hold true when she would like to become pregnant with the use of specific embryos? Is surrogacy a noble pursuit undertaken by autonomous, well-informed, and altruistic women, or is it a practice that exploits the low-income and vulnerable?

These questions have not gotten any easier to answer in the intervening years. Indeed, advances in reproductive technologies have continued to outpace the development of the laws that might govern them. At the same time, more and more people who would have been unable to procreate or become parents in past generations have been able to bring a child into their home or build a family of their choosing, including those who have historically been deemed “infertile” for social reasons such as their sexual orientation, gender identity, or unmarried status. When things do not go as planned, however, the law’s failure to prescribe clear guidelines for resolving the disputes that inevitably arise can lead to real confusion and hardship for families. And all the while, the questions keep coming.

The landscape of assisted reproductive technologies has continued to evolve since our 2007 report, and new questions have arisen as a result. Case in point: In 2010 President Barack Obama signed the Patient Protection and Affordable Care Act. Should fertility treatments be considered essential health benefits that must be required in every health plan, and what are the implications of including or excluding these services?

As assisted reproductive technologies become increasingly common and accessible, other questions demand answers: How should states define family relation-

ships? Should the government support children created after the death of a parent as it does the children of deceased parents created when that parent was alive? Should religiously affiliated employers be allowed to discriminate against employees who use assisted reproductive technologies with which the employers disagree? How do we address the rise in international surrogacy and other forms of reproductive tourism as world economies become increasingly globalized? What are the parameters for establishing citizenship for such children born abroad?

While some court opinions offer new clarity to a handful of unresolved issues, many court decisions only further muddle the landscape. We find that despite the increasing popularity of assisted reproductive technologies, the rights and responsibilities surrounding those who take part in these processes are still largely undefined.

As with the first “Future Choices,” this report examines the three primary areas in which legislatures and courts have spoken— health insurance coverage, embryo disposition, and parentage determinations—as well as additional areas where significant developments in the laws governing assisted reproductive technologies have occurred.

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