

Bulletin No. 2021-01

January 11, 2021

RE: PAID SURROGACY INSURANCE FOR INTENDED PARENTS

Last year New York enacted legislation to legalize paid surrogacy arrangements in the state. As part of this package, two new kinds of insurance coverage have been authorized that we are happy to report both admitted and eligible excess line insurers may write. **Effective February 15, 2021**, insurance producers, including excess line brokers, will be permitted to place both donor medical expense and credit insurance coverages for intended parents (individuals who intend to be legally bound as the parent of a child) in paid surrogacy arrangements with admitted and eligible excess line insurers.

First, [Section 1113 of the Insurance Law](#) has been amended to authorize donor medical expense insurance for intended parents who have entered into a gametes (reproductive cells) donor agreement:

(32) "Donor medical expense insurance" means insurance indemnifying an intended parent for medical or hospital expenses that the intended parent is contractually obligated to pay under a donor agreement when the expenses result from medical complications that occur as a result of the donation of gametes. For the purpose of this paragraph, "donor", "gametes" and "intended parent" shall have the meaning set forth in [section 581-102 of the family court act](#).

[Section 2105\(a\)](#) of the Insurance Law has been amended to include donor medical expense insurance in the kinds of insurance an excess line broker may place with eligible excess line insurers.

Second, [Section 1113\(17\)](#) has been amended to authorize the following kind of credit insurance. Excess line brokers are explicitly permitted by law to place credit insurance risks with eligible excess line insurers:

(D)(i)(II) Indemnifying an intended parent for financial loss incurred as a result of the failure by the person acting as surrogate to perform under the surrogacy contract due to death, bodily injury, sickness, disappearance of the person acting as surrogate, late miscarriage, or stillbirth. Such financial loss shall include medical and hospital expenses, insurance co-payments, deductibles, and coinsurance, necessary living expenses of the person acting as surrogate during the term of the surrogacy contract, travel expenses to arrange for the surrogacy, legal fees of the person acting as surrogate, and any other expenses that an intended parent may lawfully pay to or on behalf of the person acting as surrogate.

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ELANY successfully advocated with the legislature to ensure that excess line brokers will be permitted to place these coverages with eligible excess line insurers.

Should you have any questions regarding the content of this bulletin, please direct them to Howard Greene at hgreene@elany.org or (646) 292-5591.

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