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The logo features the word "ERICSA" in a bold, white, sans-serif font inside a teal, rounded rectangular sign. Below it, the phrase "On the Road Again" is written in a white, cursive script. The sign is supported by two teal posts. Behind the sign, there are two orange triangular road signs pointing upwards. The background consists of a light blue sky with white clouds and a green rolling hill with a grey road winding through it.

On the Road Again

**A
VIRTUAL
ROAD
TRIP**

MAY 24 – 26, 2021

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Programs Serving Same Sex Parents

Speakers

◆ Kristen Donadee ◆ Serena Hart ◆ Diane Potts ◆



This session will describe the process of adopting the UPA 2017, implementing the provisions which allowed for same sex parentage acknowledgments, and lessons learned in the process.



Overview of Same Sex Parentage

- Assisted reproductive technology (ART) creates new legal consideration — **Intent to Parent**
- Donor is not the legal parent even though genetic connection
- Intended parent is the legal parent even though there may be no genetic connection



SCOTUS Constitutional Developments

- ***Obergefell v. Hodges*, 135 S. Ct. 2584 (2015)**
 - States may not “exclude same-sex couples from civil marriage on the same terms and conditions as opposite-sex couples.”
- ***V.L. v. E.L.*, 136 S. Ct. 1017 (2016)**
 - Holding unconstitutional Alabama’s refusal to recognize same-sex adoption from another state
- ***Pavan v. Smith*, 137 S. Ct. 2075 (2017)**
 - Holding unconstitutional Arkansas’s refusal to list both spouses’ names on birth certificates of children born into same-sex marriage



Uniform Parentage Act 2017

- Revises Act to **remove gender distinctions**
- Adds new methods of establishing parentage for **nonbiological parents**
- Adds multi-factor assessment to resolve **competing parentage claims**
- Optional recognition of **more than two parents**
- Addresses parentage of children born as result of **sexual assault**
- Updates **surrogacy** provisions
- Adds new Article addressing right of children born through ART to **information about gamete providers**



Uniform Parentage Act 2017

- **Marital Presumption**

- Individual is presumed to be parent of child if:
- Individual and birth mother are married to each other and **child is born during marriage**

- **Holding Out Presumption**

- Individual is presumed to be parent of child if:
- Individual **resided in same household** with child for first two years of life of child, including any period of temporary absence, **and openly held out child** as individual's child.



Uniform Parentage Act 2017

- De Facto Parent
 - Can be adjudicated legal parent regardless of genetic tie
 - Standing only for individual alleging him/herself
- Proof by clear and convincing evidence
 - Resided as member of household for **significant period**
 - Engaged in consistent **caretaking**
 - Undertook **full and permanent responsibilities**, no compensation
 - **Held out** child as own
 - Established **bonded and dependent** parental relationship
 - **Other parent** fostered or supported relationship
 - **Best interest of child** to continue relationship



Uniform Parentage Act 2017

- Voluntary Acknowledgments of Parentage
- Can be executed by birth mother and
 - Alleged **genetic father**
 - **Intended parent** of child born through assisted reproduction
 - **Presumed parent**
- VAPs are void if:
 - Child has acknowledged or adjudicated parent
 - Child has presumed parent and presumed parent has not signed denial of parentage



Uniform Parentage Act 2017

- Number of legal parents
- Two alternative provisions for states
 - Court has power to adjudicate **only two** legal parents
 - Court may adjudicate **more than two** legal parents if court finds failure to recognize more than two parents would be **detrimental** to child



Uniform Parentage Act 2017

- Competing Claims of Parentage
- Adjudicate parentage in best interest of child based on:
 - Age of child
 - Length of time assuming role of parent
 - Nature of relationship
 - Harm to child if relationship is not recognized
 - Basis for claim
 - Other equitable factors



Enactment Status: Uniform Parentage Act 2017

- Enacted
 - Rhode Island (2020)
 - California (2018)
 - Vermont (2018)
 - Washington (2018)
- Introduced
 - Nevada (2021)
 - Pennsylvania (2021)
 - Connecticut (2021)
 - Maine (2021)
 - Massachusetts (2021)



UPA and Same Sex Acknowledgements in Washington State

Serena Hart

Local Government Liaison

Department of Social and Health Services, Division of Child Support
State of Washington



Why did Washington adopt the UPA 2017?

- Starting in 2011, Washington had already made several changes to family and parentage statutes to include same sex couples and families formed by intention. This included gender neutral language, i.e “parent” vs. “mother” or “father”.
- Washington state Senator is one of the Uniform Law Commissioners from Washington state.
 - The Senator initiated and advocated for the adoption in the legislature.



Argument for same sex Acknowledgments

- Equity and Equality
 - Put children of same sex couples on same footing as children of different sex parents.
- Maintain established psychological bonds
- Recognize expanding relationships



Main Supporters

- LGBTQ Legal Groups
- LGBTQ Community Groups
- Family Law Executive Committee – Washington State Bar Association
- Legal Voice – Organization promoting and assuring women's legal rights.



Arguments against

- Lack of tie to biology
 - Departure from how parentage has been established
 - Violates the State Plan?
 - Open to abuse
- Back door to adoption without the vetting and process



Advice

- Washington adopted UPA 2017 Verbatim
 - UPA 2017 is codified in Revised Code of Washington Chapter 26.26A
 - Section RCW 26.26A.200 states the Acknowledgment may be used by a birth parent and “the individual seeking to establish a parent-child relationship”.
 - The UPA treats parentage in a gender neutral manner.

Be careful to pay attention to statutory theme when deciding to use the same or separate forms for Acknowledgment. Equal Protection issues should be considered.



Implementation

- Department of Health creates and registers Acknowledgments in Washington.
 - DOH chose to modify the existing acknowledgment form.
 - DOH determined that given:
 - the gender neutral construction of the parentage statute, and
 - that there were several circumstances where the individuals could establish parentage by Acknowledgment, ...

there would be one form to cover all individuals who could sign an acknowledgment.



Implementation, continued

- In Washington, the Acknowledgment of Parentage may be used in the following situations:
 - If mother/birth parent was not married during the pregnancy and wants to add genetic father/parent to birth certificate.
 - If mother/birth parent was married during the pregnancy and the spouse was not added to the birth certificate.
 - If the mother/birth parent and an individual conceived a child through assisted reproduction.



Implementation...

Acknowledgement circumstances

- If the mother/birth parent was married after the birth of a child and the spouse filed an assertion with DOH.
- If the mother/birth parent was married after the birth of a child and the spouse agrees to named as a parent.
- If the person wanting to establish parentage resided in the same household with the child for the first four years of the child's life and considers the child as their own.
- A biological father can *deny* parentage only if another individual is signing an acknowledgment to be the second parent.



Implementation...

Some early issues

Prosecutors, who represent our child support agencies in domestic/family law cases started to notice an issue:

- AOPs were being registered without the proper denial from presumed parents.

- Examined the form and instructions had some feedback to strengthen the form to emphasize this requirement.

Our agency took the feedback and met with DOH to discuss adjustments to the form.

- DOH worked with our agency to make adjustments and still work with their goal of making the form understandable to non-lawyers since most people who utilize the AOP are not lawyers.

- No further issues were reported.



Adapting and Tracking Same Sex Acknowledgements

- Washington's case management system –Did not make any changes to adapt
 - Codes based on the child's relationship to the party, i.e. "son", "daughter", "nephew", "granddaughter", "unknown", etc.
 - Does not automatically take action based on the relationship
- Tracking –No formal tracking
 - DOH does not track the gender of the second parent. The form does not contain the information to do so.
 - DCS does not track but Paternity Initiatives Program reports that they have not yet received an Acknowledgment signed by same sex parents.



California: UPA 2017 Enactment as the Latest in Equality Policy

Kristen Erickson-Donadee

Chief Deputy Director

California Department of Child Support Services



History

- 1975: Uniform Parentage Act enacted in California
- 2011: *In re M.C.* finds where a child has more than two presumed parents, the court must resolve the conflicting presumptions and reduce the number of presumed parents to no more than two
- 2013: SB 274: Court may find that a child has more than two parents if recognizing only two parents would be detrimental to the child; abrogates *In re M.C.*
- 2014: SB 1306: Marriage is between *two persons* rather than a man and a woman
- 2014: AB 1951: Birth records; birth certificates list parents rather than mother/father exclusively



History

- 2015: *Obergefell v. Hodges*: States cannot deny same sex couples the right to marry.
- 2017: *Pavan v. Smith*: Married same sex couples are entitled to the same recognition on their children's birth certificates that opposite sex couples receive
- 2017: SB 179: Gender Recognition Act. California leads with policies that ensures that intersex, transgender, and nonbinary people have state-issued identification documents that provide full legal recognition of their accurate gender identity.
- 2018: AB 2684: Uniform Parentage Act 2017 amendments. Effective dates of 1/2019 and 1/2020
- 2019: AB 785: Parentage; clean up



Birth Certificate in California

- AB 1951 (2014)
- Parent and Parent
 - Checkbox to identify relationship:
 - Mother
 - Father
 - Parent

STATE OF CALIFORNIA
CERTIFICATION OF VITAL RECORD

STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC HEALTH

CERTIFICATE OF LIVE BIRTH
STATE OF CALIFORNIA
USE BLACK INK ONLY

STATE FILE NUMBER LOCAL REGISTRATION NUMBER

1A. NAME OF CHILD - FIRST 1B. MIDDLE 1C. LAST

2. SEX 3A. THIS BIRTH, SINGLE, TWIN, ETC. 3B. IF MULTIPLE, THIS CHILD 1ST, 2ND, ETC. 4A. DATE OF BIRTH - MM/DD/CCYY 4B. HOUR - 24 CLOCK TIME

5A. PLACE OF BIRTH - NAME OF HOSPITAL OR FACILITY 5B. STREET ADDRESS - STREET AND NUMBER, OR LOCATION

5C. CITY 5D. COUNTY

6A. LAST NAME 6B. MIDDLE NAME 6C. FIRST NAME 6D. RELATION TO CHILD
☐ MOTHER ☐ FATHER ☐ PARENT

7A. LAST NAME 7B. MIDDLE NAME 7C. FIRST NAME 7D. RELATION TO CHILD
☐ MOTHER ☐ FATHER ☐ PARENT

8. CERTIFY TO THE BEST OF MY KNOWLEDGE
I CERTIFY THAT THE CHILD WAS BORN ALIVE AT THE DATE, HOUR, AND PLACE STATED.

13A. ATTENDANT/CERTIFIER - SIGNATURE AND DEGREE OR TITLE 13B. LICENSE NUMBER 13C. DATE SIGNED - MM/DD/CCYY

13D. TYPED NAME, TITLE AND MAILING ADDRESS OF ATTENDANT 14. TYPED NAME AND TITLE OF CERTIFIER IF OTHER THAN ATTENDANT

15A. DATE OF DEATH - MM/DD/CCYY 15B. STATE FILE NO. - STATE USE ONLY 16. LOCAL REGISTRAR - SIGNATURE 17. DATE ACCEPTED FOR REGISTRATION - MM/DD/CCYY



MAY 24 - 26, 2021

AB 2684: Statutes of 2018

- Author: Assembly Member Richard Bloom (D)
- Sponsors:
 - Equality California
 - National Center for Lesbian Rights
- Support:
 - ACLU
- Opposition:
 - None received
- Fact Sheet Goals:
 - Adopt recommendations from ULC that better protect LGBT families
- Stated sponsor goal:
 - Portability of declaration's finality for same sex parents, even when married
- Does not adopt UPA verbatim, due to prior California changes



IV-D Considerations: Experience

- Parentage Acknowledgement vs. Paternity Acknowledgement
 - Federal Performance Measure 1 counts
 - Can we utilize *one* form?
 - Is a *parentage* declaration entitled to full faith and credit in another state?
 - How can we minimize risk of error in completion and recording?

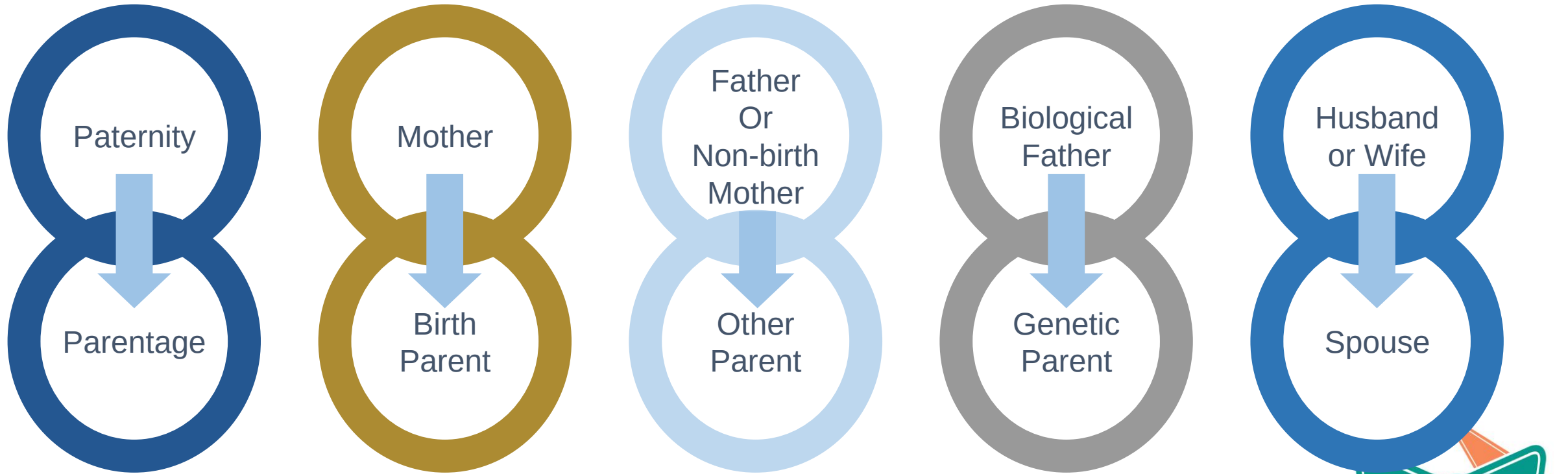


Implementation

- Voluntary Declaration of Parentage Form
 - Stakeholder Engagement in Form Development
 - Department of Public Health
 - Bill Sponsors and UPA 2017 Reporter
 - SART, RESOLVE, ASRM, Father Corps, LGBT Caucus, Alliance of Child and Family Services
- Judicial Council of California Forms
 - 25+ Forms needed updates due to AB 2684 and SB 179
 - Gender neutral
 - If we ask a question regarding gender, is it necessary?
 - Paternity → Parentage
 - Effective January 1, 2020



The following changes were made in California forms:



“Paternity” is replaced with the more encompassing “Parentage” – the difference is that it is no longer driven exclusively by biological relationship.



Training for Witnessing Agencies

- Authorized witness agencies: Over 750 statewide
 - Hospitals
 - Local child support agencies
 - Local registrar of births and deaths
 - Courts (Family Law Facilitator)
 - County welfare office
- Authorized witnessing agencies receive training from DCSS
 - Qualified to answer parents' questions
 - Eligible to receive \$10 payment for each VDOP
- Notary may witness as well



Statistics on Usage So Far...

- Voluntary Declaration of *Parentage* effective January 1, 2020
 - Calendar Year 2020:
 - Biological Paternity: 132,668
 - Same Sex Parentage: 789
 - Calendar Year 2021 (through March):
 - Biological Paternity: 32,716
 - Same Sex Parentage: 216
 - <1% for Same Sex Parentage usage

