

RECOMMENDED

## PRINCIPLES AND STANDARDS

FOR ENGAGING IN **INTERNATIONAL COMMERCIAL SURROGACY** ARRANGEMENTS

In international commercial surrogacy arrangements, intended parents compensate a woman living in another country to get pregnant through in vitro fertilization and birth a child for them. These arrangements involve inevitable power imbalances between intended parents and surrogates due to their different economic positions, unequal access to social and other resources, and inadequate regulation and oversight. Some people believe that the ethical challenges are too significant to be overcome and that compensated arrangements should not be permitted. Others think international commercial surrogacy should be accessible but regulated by governments and overseen by appropriate bodies, which is not currently the case in most jurisdictions. *Even in surrogacy destination countries with regulation, intended parents can play an important role in assuring safeguards for the women they hire as surrogates and the children born of these arrangements.*

This tool was developed to help intended parents advocate for an arrangement that will better safeguard the health and rights of all parties involved. Intended parents are encouraged to find agencies, brokers, clinics, and/or lawyers who work in contexts in which they can ensure that surrogacy arrangements follow the principles and meet the standards listed in this document.

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### PRINCIPLES

1. International surrogacy arrangements must be approached from an equity perspective; this requires acknowledging and addressing differences in power and privilege between intended parents\* and surrogates. Both surrogates and intended parents must have the opportunity to shape the terms of the arrangement and the contract.
2. Surrogates must maintain all rights to self-determination and decision-making over themselves and their pregnancies.
3. Surrogates must be assured conditions that do not compromise their physical, mental, social, or emotional well-being during their pregnancies and post-partum period.
4. Intended parents should not enter into surrogacy agreements in countries where surrogacy is prohibited; doing so may lead to uncertainty regarding the citizenship and legal parentage of the future child and the possibility that surrogates would be held criminally accountable.
5. The rights of individuals and couples whose status as parents may be vulnerable—due to inadequate protections regarding sex, sexual orientation, gender identity, marital status, ability, or religion in their home country or country of the surrogacy arrangement—must be respected and guaranteed.
6. Legal parentage must not be predicated on a genetic connection to the child born through surrogacy.
7. The citizenship status and legal parentage of future children must be clarified and ensured in any surrogacy arrangement.
8. Children born through surrogacy must be guaranteed the right to knowledge of their biological origins.
9. Intended parents must agree to parent child(ren) born through their surrogacy arrangements regardless of number, sex, genetic condition, or physical or mental ability.
10. Contact between intended parents and surrogates must be allowed and encouraged to recognize the humanity and integrity of the surrogate's role and to provide a feedback loop regarding her conditions.

\* *There may be one or more intended parents; the plural is used in this document for consistency.*

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## STANDARDS

### Rights of surrogates

#### ***Meaningful informed consent before agreeing to a surrogacy arrangement***

1. The surrogate must be provided full and accurate medical information about all aspects of embryo transfer, pregnancy, and delivery including risks for short- and long-term complications and health outcomes; details of the arrangement and the contract written in her primary language; and an oral explanation of the details and the contract in that language.
2. The surrogate must understand all aspects of the contract, and her agreement and signature must be secured without coercion.

#### ***Contract provisions***

3. The surrogate must be guaranteed freedom of movement, unrestricted access to her family and community, and autonomy about daily behaviors at all points covered by the surrogacy arrangement.
4. The surrogate must have the right to make all health and welfare decisions regarding herself and her pregnancy, including the decision about whether to retain or reduce the number of fetuses and whether and when to terminate or continue a pregnancy.
5. The surrogate should be guaranteed a compensation schedule that provides for payment throughout the pregnancy (rather than a bulk payment after the child is born). She must be compensated regardless of the outcome of the pregnancy (e.g., miscarriage, stillbirth, or termination) and regardless of the sex, genetic condition, or physical or mental ability of the child. The reimbursement and compensation schedules must be clearly stated in the contract.
6. An independent escrow account must be set up to guarantee timely payments to the surrogate and to ensure financial arrangements are completed as agreed upon (e.g., to guarantee payment if intermediaries go out of business).
7. The intended parents must pay for the surrogate's ongoing independent legal representation by an attorney of her choosing via the independent escrow account to preclude intended parents' influence over legal counsel.
8. The intended parents must pay for the surrogate's medical care, whether through a health insurance policy or access to medical care—whichever is the best method to access care in the country or context in which the surrogate is residing. Medical care covers prenatal care, medical treatments and hospitalization, and socioemotional support if desired, with a term that extends throughout the duration of the pregnancy and for at least eight weeks after the birth of the child; this includes all co-payments, deductibles, and any other out-of-pocket medical costs associated with the pregnancy.
9. Contact must be allowed between the intended parents and the surrogate before, during, and after her pregnancy.
10. Under no circumstances must the surrogate be required—in writing or by oral pressure—to refrain from an emotional connection to the fetus during pregnancy.

Because intended parents and surrogates in international arrangements live in different locations, intended parents usually have no way of knowing whether the agreements they've made are being implemented. The best way to ensure that the agreements are followed is to communicate with the surrogate, a practice that is often restricted. Anecdotal reports show that physicians, clinics, and agencies often agree to contact when pressed by intended parents. Intended parents can be important agents of change in bringing improved practices to assisted reproduction.

### **Rights of intended parents**

11. Policies, standards, practices, and protections related to international commercial surrogacy must apply equally without regard to sex, gender identity, sexual orientation, marital status, disability, or religion of the intended parents.
12. Non-genetic intended parents must not be denied legal recognition of parentage, which is particularly vulnerable in the cases of same-sex or transgender couples.
13. Prior to entering into a surrogacy contract, the intended parents must have access to up-to-date accurate information about: surrogacy laws in their country of residence regarding judgment of parentage and citizenship of the child; surrogacy regulation in the country where the surrogate resides; medical information related to egg provision (donation), in vitro fertilization, and surrogacy; and potential legal, medical, and other conflicts that may arise as a result of entering into a surrogacy contract.

### **Rights of egg providers (donors)**

14. Egg providers must be given full and accurate medical information about all aspects of the egg retrieval process, including hormonal stimulation and surgical removal of eggs and known short- and long-term risks. They should also be informed that, currently, there is insufficient research to determine the long-term effects of hormonal stimulation for egg retrieval.
15. Egg providers should not be considered if they have a previous diagnosis of ovarian hyperstimulation syndrome (OHSS) or if they have undergone more than three hormonal stimulation cycles.
16. Clinics must not give high doses of hormones to egg providers as a way to produce more eggs.
17. In cases where egg providers produce more than 20 eggs in a cycle, the process should be canceled due to greater risk for serious complications.
18. Egg providers must have access to medical care—whether through a health insurance policy or access to medical care—that covers any medical costs, including hospitalization, related to the hormonal stimulation and egg retrieval process. Clinics must monitor egg providers throughout the process and conduct at least one follow-up visit after retrieval so that any complications or adverse outcomes can be addressed.
19. If compensation is agreed upon for the egg provider (donor), she must be compensated regardless of whether the retrieval process is canceled due to health concerns.

### **Rights of children**

*Some of these provisions would not be included in a surrogacy contract, but all are critical for intended parents to address or resolve to ensure the rights of children born through surrogacy arrangements.*

20. Decisions regarding medical practices must maximize the health of the child, for example by only using single embryo transfer and allowing for vaginal birth unless a cesarean is medically necessary. (Multi-fetal pregnancies and cesarean sections are riskier for pregnant women and for children.)
21. The citizenship of the child born through surrogacy must be guaranteed in the intended parents' home country or intended country of residence.
22. The egg provider (donor), sperm provider (donor), and surrogate must agree to identity release when the child reaches maturity.

## Requirements for clinics/physicians

23. Clinics must safeguard the health and respect the rights of surrogates and egg providers (donors) and not put the interests of intended parents over those of the surrogate or egg provider.
24. In keeping with accepted standards for best medical practice, clinics must conduct single embryo transfer unless there are exceptional circumstances and then only with additional counseling and consent of the surrogate and intended parents.
25. Under no circumstances must the surrogate be required to undergo a medically unnecessary scheduled cesarean section, with its well-recognized attendant risks, as a way to accommodate the intended parents or medical personnel.
26. Clinics must ensure that all provisions in the contract are implemented and respected.

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## RECOMMENDATIONS GOING FORWARD

- Standards for national and state regulation and oversight must be established to ensure the health, well-being, and rights of all individuals involved in surrogacy and egg provision arrangements, including—but not limited to—regulation and oversight of surrogacy contracts, fertility clinics, egg brokers, surrogacy agencies and brokers, and other intermediaries. Governments have a responsibility to safeguard their residents rather than leaving such important protections to individual arrangements and contracts in this uncharted, constantly changing era of assisted reproduction.
- In the countries where children born of surrogacy reside, as well as where egg and sperm providers (donors) and surrogates live, a registry must be established and maintained to collect needed health and safety data and to enable the egg and sperm providers, surrogates, and children to exchange medical and identity information once the child comes of age. The complexity of such registries requires global collaboration, and their success depends on such cooperation.
- More long-term research is needed regarding both the risks of egg retrieval and the well-being of children born through surrogacy. Documentation, data collection, and research projects will help inform and improve practices and regulation moving forward.



*This document was developed based on the work and input of researchers and advocates around the world in the fields of women's health, reproductive rights and justice, bioethics, and assisted reproductive technologies. We welcome input, particularly from those with lived experience as a surrogate or intended parent, to update the Principles and Standards to reflect the current context.*