

RECOMMENDED

PRINCIPLES AND STANDARDS

FOR ENGAGING IN **INTERNATIONAL COMMERCIAL SURROGACY** ARRANGEMENTS

Introduction

Many Intended Parents (IPs) ask what they should have on their radar when considering international surrogacy. Most important is that, as an IP, you are in a unique position to work for greater safeguards for gestational surrogates and the children born of these arrangements.

There are many ethical considerations at play. This document outlines recommended principles and standards for cross-border surrogacy arrangements, though many can be applied in domestic settings as well. It was developed to help IPs understand and advocate for arrangements that will better safeguard the health and rights of all parties involved. We hope it will also be useful for advocates and researchers looking to improve conditions in the international commercial surrogacy landscape.

The debate about surrogacy

As IPs navigating information about international surrogacy, you will find a number of competing perspectives. Some women's and reproductive rights advocates and organizations around the world 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.

At Surrogacy360, we believe that IPs have more power than surrogates in international surrogacy arrangements due to their more secure economic positions and greater access to social and other resources, and also because of inadequate regulation and oversight in many countries. Given these factors, you have the opportunity to play a vital role in influencing both the terms of a contract and on-the-ground conditions.

Taking Action

If you decide to enter into an international arrangement as an IP, we encourage you to find agencies, brokers, clinics, and/or lawyers who can ensure that surrogacy arrangements follow the principles and meet the standards listed in this document.

Because IPs and surrogates in international arrangements live in different locations, it's likely to be difficult to know whether the agreements you've made are being implemented. The best way to ensure that the agreements are followed is to communicate with the surrogate. While direct contacts are often discouraged, anecdotal reports show that physicians, clinics, and agencies often agree to contact when pressed. IPs can be important agents of change in bringing improved practices to assisted reproduction.

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.*

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.

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, surgical removal of eggs, and known short- and long-term risks. They should also be informed that there is currently insufficient research to determine the long-term effects of hormonal stimulation for egg retrieval.
15. Clinics must not overstimulate egg providers to produce more eggs. In cases where there is a risk of overstimulation, the process should be cancelled due to increased risk of complications.
16. Agencies and clinics should not conduct egg retrieval with egg providers who indicate previous diagnoses of ovarian hyperstimulation syndrome (OHSS) or who have undergone egg retrieval cycles within the last three months.

17. Egg providers must have access to medical care—whether through a health insurance policy or access to medical services—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.
18. Egg providers must have legal representation, independent of and paid for by the intended parents. The contract should not include language that puts egg providers under duress and should not hold them financially liable for canceled cycles.
19. If egg providers will be compensated, a schedule of compensation must be contractually agreed upon. Egg providers must be compensated regardless of whether the retrieval process is canceled because payment is for undergoing the process, not for the eggs.
20. Egg providers must be able to withdraw consent and discontinue participation at any point in the process without incurring financial consequences.

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.

21. 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.)
22. The citizenship of the child born through surrogacy must be guaranteed in the intended parents' home country or intended country of residence.
23. The egg provider (donor), sperm provider (donor), and surrogate must agree to identity release when the child reaches maturity.

Requirements for Clinics/Physicians

24. 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.
25. 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.
26. 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.
27. Clinics must ensure that all provisions in the contract are implemented and respected.

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, LGBTQ rights, bioethics, and assisted reproductive technologies. We welcome input, particularly from people with lived experience as surrogates, intended parents, or individuals born of surrogacy, to update the Principles and Standards and keep them current.