

**Changing Practice in International Commercial Surrogacy:
Recommendations for Accountability, Safety, and Equity in Family Formation**

Our Bodies Ourselves

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Surrogacy -- the use of assisted reproductive technologies to enable a woman to carry and give birth to a baby for another couple or individual -- raises complex questions. The practice, usually mediated by fertility clinics and agents, involves social, legal, commercial, and, importantly, biological relationships among intended parents, surrogates (also called gestational mothers), egg providers (sometimes), and the children born. When surrogates live in different countries than the intended parents, the class and racial divide frequently present in these relationships is magnified -- especially when wealthier intended parents from the Global North hire surrogates with scarce resources from Global South countries, where cultural norms and economic realities are likely to limit opportunities for women.

Given the distance and lack of contact, intended parents are not always aware of the conditions under which surrogates participate in arrangements, or the impact of certain contractual and treatment protocols on them and the future children. This document highlights -- and calls for change in -- some of the more troubling surrogacy practices and conditions. These persist even as some governments experiment with better regulation and oversight, because certain surrogacy providers are able to evade legal restrictions.

While advocating for equality in family formation, Our Bodies Ourselves argues for a two-pronged approach to making necessary changes and improving the status quo:

Provide accurate information to surrogates, egg providers, and intended parents. Toward this end, Our Bodies Ourselves and the Center for Genetics and Society developed the online platform www.surrogacy360.org.

Hold surrogacy providers accountable. Policy makers, medical professionals, and reproductive justice advocates, many of whom are coming to understand the health, legal, and social stakes, should work to ensure that equality for intended parents does not cost surrogates the equity and justice that are fundamental to their health and human rights.

With this second goal in mind, Our Bodies Ourselves recommends the following in surrogacy policy and practice:

1. Surrogacy providers must OBTAIN CONSENT from all participants that is truly informed.

- Surrogacy arrangements are complicated, not only because of the motivations in play, but also because of the cultural, economic, educational, and linguistic differences across parties. These variations position the written contract as *the* unequivocal set of rules to level the playing field on all terms and agreements, ranging from treatment protocols and mode of birth to compensation fees and payment schedules. Because most contracts are written in the language of the intended parents, surrogates are often unable to read, speak, or comprehend them. This is just one example of how contracts prioritize the wishes of the intended parents. Another example has to do with who has access to what information. For example, often the intended parents have the right to review the surrogate's medical history and her health during pregnancy, but no such right exists in the other direction for the surrogate. This detracts from the integrity of the consent process, which should require contracts to be transparent and fair, both in terms of expectations and language. Contracts should also require that surrogates have access to independent medical and legal counsel, with opportunities throughout the process to articulate their concerns, resolve disputes and, if needed, withdraw from or terminate the arrangement. These are the minimum goals for any contract that involves payment for services.

2. Surrogacy providers must **ADHERE TO RECOMMENDED MEDICAL LIMITS** on procedures such as embryo transfers, birth spacing (inter-pregnancy intervals), and maternal age.

- Without recommended limits in place in policy and practice, the health of surrogates is at risk. Surrogates are often implanted with more than one embryo to increase the chance of a successful pregnancy. Most professional health and perinatal organizations strongly urge capping transfers to one embryo for each IVF treatment cycle (as well as for any pregnancy using assisted reproductive technologies), because of the risks associated with multi-fetal pregnancies. Each additional fetus increases the likelihood of conditions such as preeclampsia, diabetes, and placental abruption (separation of a placenta from the uterine wall). For children, multi-fetal pregnancies can result in premature birth (before 37 weeks), low birth weight, and immature organs, leading to problems of the digestive tract and heart, as well as in disabilities including spina bifida. Each of these conditions can require both neonatal intensive care and long-term medical care.
- Surrogates may also undergo closer-than-recommended birth spacing of subsequent pregnancies if wanting to help intended parents build a family of more than one child, or if contracting with different intended parents soon after a birth. Shorter inter-pregnancy intervals carry elevated maternal-child health risks, especially when surrogates are from

resource-poor countries.¹ Surrogates need to be informed and allowed and encouraged to follow evidence-based recommendations for birth spacing.

- Many clinics allow for surrogates to exceed the American College of Obstetricians and Gynecologists' definition of advanced maternal age at 35 years. If surrogates are over 35, they need to be explicitly informed about the risks of pregnancy at this age, especially alongside the additional risks of gestational surrogacy.
- Clinics must acknowledge and inform all participants in a surrogacy arrangement of the important role surrogates play in fetal development and future health. Too often under-acknowledged, this health and development may be impacted through biological or epigenetic changes, but in either case, it is clear that surrogates are not “just the incubator.”²

In all these practices, it is the job of surrogacy providers to inform and adhere to medically recommended limits. Many surrogates are unaware of the risks, recommended guidelines, and biological impact of surrogacy, and thus are unable to give or withhold informed consent. Providers must bridge any knowledge and linguistic gaps and encourage practices known to result in better outcomes for gestational mothers and the children born.

3. Surrogacy providers must ADOPT VAGINAL BIRTH AS STANDARD CARE, unless surrogates request otherwise, or medical indications would call for a different standard of care.

- Cesarean sections can save lives if, for example, the fetus is breech or has a less than normal heart rate, or if labor fails to progress. They also have risks, including accidental cuts to adjacent organs, severe and ongoing pain at the incision site, infections, internal scar tissue, and placenta accreta (where a placenta attaches too deeply to the uterus and can lead to life-threatening bleeding). For newborns, the short-term risks of cesarean sections include accidental cuts, reduced blood flow from the placenta, breathing difficulty, and low Apgar scores, and long-term risks such as asthma. Research on other potential long-term risks continues.

In most cases, surrogates in cross-country surrogacy arrangements are not given the option to have a vaginal birth and instead are scheduled to have cesarean sections. They routinely undergo medically unnecessary and invasive abdominal surgery as a condition of their

¹Mignini, LE, Carroli, G, Betran, AP, Fescina, R, Cuesta, C, Campodonico, L, De Mucio, B, Khan, KS. Interpregnancy interval and perinatal outcomes across Latin America from 1990 to 2009: a large multi-country study. *BJOG* 2016; 123: 730– 737.

² Just as in any pregnancy, the placenta transports nutrients to the fetus and clears the fetal blood supply of waste products. Because it's a porous filter, fetal and maternal cells are easily exchanged, along with hormones and other biochemical compounds/molecules that can have lasting effects on the offspring.

contract and generally for the convenience of fertility clinics and travel needs of the intended parents.

4. Surrogacy providers must GUARANTEE THE SURROGATE’S AGENCY in decisions, freedom of movement, and access to community.

- Staying physically active, socially engaged, emotionally connected, and individually empowered are the hallmarks of a healthy pregnancy. For many reasons, surrogates are often bound by restrictive rules that neglect their needs and contradict common sense and practice. Frequently, they have little or no control over:
 - Health care decisions involving tests, treatments, or whether to terminate (or continue) a pregnancy.
 - How they live during pregnancy. Surrogates are often required to live in dormitory-style accommodations during the pregnancy (in some countries, including India) and are subject to ongoing monitoring in the residence, restrictions on leaving the residence, and enforced distance from their families (including children) and communities. The physical and emotional toll of these restrictions – and, as a result of some, the ensuing isolation – is impossible to quantify, but not hard to imagine given their impact on perinatal wellness. Many in the perinatal community work hard to ensure all birthing parents’ right to self-determination on every aspect of pregnancy, birth, and postpartum; surrogates deserve the same.
- Ethical treatment of surrogates should also entail attention to their long-term mental health. There is little evidence-based research on the long-term mental health consequences of surrogacy; the research that has been conducted – mainly in the United Kingdom where commercial fees are prohibited and surrogates are involved in the matching process – suggests that the quality of the experience depends on the nature of the relationship with intended parents, and whether there are common goals and, perhaps, plans for future contact. For surrogates involved in international surrogacy, where distance, education and language barriers are common, mental health consequences may be substantial. Global surrogacy providers should follow and align protocols with research as it becomes available, explaining and promoting best practices with all participants in the surrogacy arrangement.

5. Surrogacy providers must OFFER INSURANCE COVERAGE for postpartum care and support in recovery and adjustment.

- As all birthing mothers recover and care for a newborn, it is critical that they receive postpartum support for at least twelve weeks (known as the “fourth trimester”). In the case

of surrogates, who are not likely to parent the children they birth, they will need time and rest to heal physically from the hormone-driven processes of birth. This physical recovery happens at the same time as they may be coping with emotional complications, such as grief arising from relinquishment of the infant or loss of the close relationship with the intended parents. These often-overlooked risks are likely to be neglected unless comprehensive postpartum care is provided, and surrogates need and deserve this standard of care.

6. Surrogacy providers must ACKNOWLEDGE EXISTING PROBLEMS and abuses and take steps towards solutions.

- Given the complicated nature of surrogacy arrangements and the rapid pace at which the practice of surrogacy has evolved, new questions and concerns emerge daily while the legal and social discourse attempt to catch up. Some are gaining more traction than others, for example: the abandonment or abuse of newborns in the absence of legal checks-and-balances; the child's legal parentage when surrogates refuse to surrender parental rights to the intended parents from another country; the practice among wealthy intended parents of contracting simultaneously with multiple surrogates to create large families quickly; and citizenship and immigration dilemmas as countries of the intended parents refuse to grant travel documents.³
- As for the newborn, there are possible repercussions of the birth arrangement, particularly on the child's adjustment. Responses to some problems have so far been reactive. For example, unclear regulations or immediate bans have left families in limbo, especially with regard to issues related to parentage, citizenship, and identity.
- Short- term issues demand urgent resolution. Other questions are farther afield and await a generation of surrogacy-born children to mature and adjust to new definitions of self, family, community, and nationhood. While research is scarce, these may include questions about parentage and identity, as well as attempts to identify and seek out the genetic and birth parents. Perhaps lessons can be learned from the fields of adoption and perinatal care. Time, however, is of the essence to prevent this cohort of third-party participants from slipping between the global cracks in optimum maternal and child health outcomes.

³A recent tragic example of commercial surrogacy gone awry has been the physical and psychic stress endured by the surrogates and babies stranded in the Ukraine since the onset of the Russian invasion. According to news reports, surrogates and the children born have endured mental and physical dangers, commonly culminating in premature births and the potential for higher maternal/infant morbidity/mortality due to malnutrition, contaminated water, and toxic chemical and radiation exposures. Yet, programs are still in business and advertising online their high successes and healthy surrogate candidates.

In summary, governments must pay closer attention as the business of international commercial surrogacy takes advantage of loopholes, crosses borders and, in certain hubs, moves underground. Around the world, regulations and bans have created a haphazard patchwork that is leaving surrogates and children at heightened risk. The situation is made worse by the absence of independent medical and legal counsel, inadequate research and documentation of harmful practices, erratic government oversight, sporadic media coverage, and barely audible public discourse. We can and must do better, calling for better oversight by surrogacy providers and policy makers.

By working with policy makers to codify the recommendations outlined here, public health advocates, medical practitioners, and reproductive justice communities can help to rebalance the equation in which surrogates have little power to address their health and human rights concerns. Please join Our Bodies Ourselves and others in seeking to improve practices in international commercial surrogacy, so that equality for some does not cost equity for others.