



Gestational Surrogacy Fact Sheet

This fact sheet provides basic information about gestational surrogacy. Gestational surrogacy is a type of surrogacy where the surrogate does not provide the egg for fertilization.

There is another type of surrogacy called "genetic surrogacy." This fact sheet does not cover genetic surrogacy. Recent changes to laws in New York do not cover genetic surrogacy. For questions about genetic surrogacy, talk with your health care provider or infertility specialist.

If you are interested in learning more about gestational surrogacy, visit the resources at the end of this sheet, or talk with a health care professional or an attorney who specializes in surrogacy.

What is gestational surrogacy?

Gestational surrogacy is a process where one person, who did not provide the egg used in conception, carries a fetus through pregnancy and gives birth to a baby for another person or couple. The person who carries the fetus is called a "surrogate" or "gestational carrier." The person or couple who are seeking to parent the baby or babies are called the "intended parent(s)."

Who chooses surrogacy to become a parent?

Many people choose surrogacy as a way to start or add to their family. Most commonly, intended parents are:

- Not able to have children because of infertility;
- Not able to safely give birth to a child because of health conditions;
- Same-sex male couples;
- Transgender individuals or couples; or
- Prospective single males.



Who can be a surrogate?

Surrogates should have had healthy pregnancies in the past and a desire to help intended parents who are unable to have children. A surrogate may carry a fetus for someone they don't know, or for a friend or relative.

What does it take to be a surrogate or an intended parent?

Surrogates must be screened to make sure they are healthy enough to have a baby. Medical guidelines, including Department of Health surrogacy screening guidelines, recommend that surrogates be between 21 and 45 years of age, have had at least one healthy pregnancy and a full-term delivery without complications. Medical screening includes:

- blood tests and other lab work;
- a physical exam;
- a psychosocial exam; and
- consultation with the health care provider.

Other screenings may be ordered by health care providers who are experts in surrogacy and reproductive health. These screenings help to make sure that the surrogate is medically appropriate to serve as a surrogate and fully understands any potential risks.

Intended parents are screened to make sure they are ready to begin the surrogacy process. This includes being physically, mentally and legally capable of parenting and can afford potential costs associated with the surrogacy process.

If an intended parent is providing the egg or sperm, they may be screened for various health issues, as well as genetic conditions. Genetic screening is not done to reveal physical characteristics not harmful to a baby, like hair color, eye color or sex.

New York State law requires certain New York State residency requirements for the intended parent(s) and surrogate (see Family Court Act § 581-402[a],[b]).



Who else is involved in the gestational surrogacy process?

- **Attorneys:** The surrogate and the intended parent(s) must be represented by separate legal counsel who are licensed in New York State and have expertise in surrogacy matters. The attorneys draft and review legal documents to make sure their client(s)' (the surrogate or intended parent(s)) interests are protected. They also help their client(s) understand their rights and responsibilities included in the surrogacy agreement.
- **Surrogacy matching programs:** Some intended parents may go through a surrogacy matching program, also called a *surrogacy agency*. These programs:
 - coordinate the many services that are part of the surrogacy process;
 - work to make sure that everyone's interests are protected;
 - can refer the surrogate and intended parent(s) to attorneys who can help them with the legal aspects of surrogacy;
 - can refer the intended parents and surrogates to qualified health care providers.

In New York State, surrogacy programs must be licensed by the New York State Department of Health and follow the Department's guidelines.

- **Egg and sperm donors:** Some intended parents choose to use sperm or egg(s) from a sperm or egg bank. There are many reasons why they may choose to use donated sperm or eggs. In New York State, gestational surrogates cannot donate their own eggs as part of a surrogacy agreement.
- **Health care providers:** Some health care providers specialize in surrogacy arrangements. These providers include:
 - An *obstetrician* or *obstetrician/gynecologist* (an OB/GYN): a doctor with training in pregnancy and reproduction. They provide the primary medical care for the surrogate during the pregnancy. Other health care providers, including nurse midwives, nurses and doulas may also be involved in the surrogate's care.



- *A reproductive endocrinologist*: an obstetrician who also has special training in diagnosing and treating infertility. They use medical procedures like in vitro fertilization, or IVF, to help surrogates become pregnant.
- *A fertility clinic or IVF clinic*: A group of providers who provide medical screening and services required by those who need medical help to achieve a pregnancy.
- **Mental health professionals**: Mental health professionals meet with the surrogate and their partner (if any) to make sure that they are emotionally prepared for the surrogacy process. This includes assessing that they have thought through the potential emotional risks and the impact of the process on their families. Intended parents also meet with mental health professionals, to make sure that they understand the surrogacy process and are able to care for the child.

If I am using surrogacy, will others know about my health information?

Privacy and confidentiality are very important. All professionals that work with surrogates and intended parents must keep their client(s)' medical information private and confidential. They also cannot share information about the child being born through surrogacy.

A surrogate may be asked to share information about their medical history and the health of the pregnancy with the intended parent(s).

Surrogates and intended parents often meet in person before the pregnancy. They usually keep in contact during the pregnancy. The intended parent(s) are usually at the hospital during the child's birth.

How does surrogacy work?

The first step in surrogacy is for the intended parent(s) to select a surrogate. The surrogate and intended parent(s) are screened to make sure they are healthy (both physically and emotionally) and are able to participate in the surrogacy process. Once a surrogate is matched with the intended parent(s), the parties work with their separate attorneys to write, review, revise and sign the surrogacy agreement. This happens before the start of any medical procedures (other than screening tests.)



The surrogacy agreement describes the rights and responsibilities of the surrogate and the intended parent(s) and the promises (agreement) the parties are making to one another. New York State law is very specific about the requirements of the agreement (see Family Court Act § 581-403). Surrogacy matching programs and attorney for the surrogate and intended parent(s) must ensure that all requirements are met under New York State law to ensure the agreement is legally binding and enforceable, and to best protect the interests and rights of all parties to the agreement.

After the surrogacy agreement is signed, an embryo can be transferred into the surrogate through IVF. IVF is a medical procedure where an egg is fertilized with sperm in a laboratory. This creates an embryo that is transferred into the surrogate's uterus. The surrogate usually takes medication before the embryo is transferred. This makes the IVF procedure more likely to result in a pregnancy.

What is included in a surrogacy agreement and required under New York law?

Surrogates have a right to the following, to be provided and paid for by the intended parent(s):

- the right to comprehensive health insurance coverage. This insurance must cover the surrogate through the entire surrogacy process, from the time the surrogate takes any medications before or after the embryo transfer, throughout the pregnancy, and for 12 months after the pregnancy ends (whether resulting in the child's birth, stillbirth, or termination of the pregnancy);
- a disability insurance policy;
- a life insurance policy;
- a comprehensive health insurance policy that covers mental health counseling; and
- compensation for legal fees.

Surrogates also have the following rights under New York law:

- the right to select a health care professional of their own choosing;
- the right to terminate or continue the pregnancy;



- the right to make health and welfare decisions about themselves and the pregnancy, including the right to reduce or retain the number of fetuses or embryos they are carrying;
- the right to receive compensation for the surrogacy, which must be held in escrow with an independent escrow agent; and
- the right to be provided with a copy of the Surrogate's Bill of Rights.

The surrogacy agreement is a long document, and includes additional information related to the surrogacy process.

Surrogacy matching programs and attorneys for the surrogate and intended parent(s) must refer to the full legal requirements set forth in New York law, including but not limited to the requirements for a surrogacy agreement, set forth in Family Court Act Article 5-C, Part 4, and the Surrogate's Bill of Rights, set forth in Family Court Act Article 5-C, Part 6. The above lists are not intended to be exhaustive or serve as legal guidance.

How much does surrogacy cost?

Surrogacy can be costly, and the price range varies. Costs can include legal fees, medical expenses, surrogacy agency fees, the surrogate's compensation, and other miscellaneous expenses. Many surrogacy arrangements cost between \$60,000 and \$150,000.

Are there risks with being a surrogate?

Yes, anyone considering surrogacy must be aware of the potential risks associated with being a surrogate. There are health risks to the surrogate as with any pregnancy. Most pregnant people have mild or moderate symptoms like nausea and vomiting, minor swelling, and fatigue. In rare cases, pregnant people experience more serious medical complications, including death, even if they were healthy before becoming pregnant. These risks will be discussed as part of the surrogacy process, and surrogates must be screened for possible health risks.

Getting routine health care during and after a pregnancy is an important part of the surrogacy process. This may help identify any health problems before they become severe.

For more information on the health risks associated with pregnancy, talk with your health care provider or visit [Pregnant or Just Had a Baby? Know When to Call for Help - Fast!](#).



Being a surrogate can be time-consuming and emotional. If the surrogate is married, that person generally must also be involved and willingly cooperate in the surrogacy arrangement. Although not genetically related, the surrogate may become attached to the baby they are carrying. While most surrogates experience joy and pride because of the vital role they play in assisting the intended parent(s) to have a child, some surrogates may find the process emotionally challenging.

Are there risks to Intended Parent(s) using a surrogate?

There may be emotional and financial risks for the intended parent(s). For example, the intended parent(s) can become emotionally attached to a surrogate but frustrated by their lack of control over the surrogate's lifestyle and pregnancy. Also, there is no guarantee that the surrogate will become pregnant after the embryo is transferred in their uterus, and each cycle of IVF can be costly. There may be complications during the pregnancy which may put the surrogate's health, or the health of the fetus, at risk. Finally, there is no guarantee that the pregnancy will go to term and or that the child will be born healthy.

Where can I find out more about infertility and surrogacy?

- [American Society for Reproductive Medicine](#)
- [The National Infertility Association](#)