



Surrogacy 101

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Advice for Intended Parents on Day 0.

OK, Intended Parents, here we go!

First, I'm going to meet you exactly where you are, and for everyone that place is different. Maybe you had a hysterectomy when you were 19, and you always knew the day would come when you'd have to trust another woman to carry the most precious thing in the world to you. Maybe your doctor told you just yesterday that the last embryo transfer didn't work, that your uterus is "inhospitable," that there was no heartbeat. Maybe you're two men who are ready to be parents, and you're full of wonder, awe, curiosity, optimism and stress about what's ahead – the egg donor, the IVF cycle, the gestational carrier, and on and on and on. Maybe you're full of hope. Maybe you're full of grief. Maybe it changes by the minute. Wherever you are right now is OK. You're taking the right steps. You're doing the right things. **You've got this.**

A surrogacy journey is not only long and complicated, but it's also a journey that (hopefully) ends with a beginning. After you get through all of the complexities of having your baby, you then have to raise that baby. It's important right now to keep your hope and energy up and your stress and anxiety down so that you're physically and emotionally available for your new baby.

This is a guide to help de-mystify this process. It is intended to introduce you to the basics of surrogacy as you get on your way. As a companion to this guide, I strongly suggest that you identify and gather your village. You're going to need encouragement and support. You're going to need to breathe and take breaks. You need to take care of yourself and each other. And guess what? Everything I just said about what you'll need to have your baby is exactly what you'll need to raise that baby. So, it's never too soon to start putting those caring people and those self-care habits in place. Stop reading and do it now. Make a list of who is going to take care of you and how you're going to take care of yourself before you go any further.

Also, because I'm a lawyer and I have to say these things: This guide is not intended to provide and is not a substitute for knowledgeable and experienced medical, psychological, and legal advice. OK, disclaimer done.

Let's dive in!

1) What is surrogacy?

Gestational surrogacy is when a woman carries an embryo that is not genetically related to her on behalf of another individual or couple, who intend to be the resulting child's parent(s).

2) How does gestational surrogacy work?

The intended parent(s) find a gestational surrogate match either through an agency or on their own (called an "independent journey").

Embryos are created at a fertility clinic using either donor eggs or the eggs of an intended mother and either donor sperm or the sperm of an intended father.

- The embryos are then implanted into the carrier's uterus for her to carry the pregnancy on behalf of the intended parents.
- This is all done under the careful supervision of a physician. There will also be a reproductive psychologist and two lawyers involved as well.

3) What should I look for in a gestational surrogate?

- At least 18 years of age (some agencies and states require that she be at least 21 years old)
- Married or in a stable committed relationship with someone who is supportive of her decision to be a surrogate.
- Has had and is raising at least one child of her own.
- Is in good physical and mental health.
 - Each clinic has a cut-off for maximum Body Mass Index (BMI) for a gestational carrier (this max is usually 30-33, but varies by clinic)
 - Almost all clinics will require that a gestational carrier be off all psychotropic medications (anti-depressant or anti-anxiety) for at least 6 months before her psychological screening.
- Is satisfied with the size of her own family and/or does not desire to have additional children of her own.
- Is comfortable with the sexual orientation of the intended parents.
- Has health insurance and/or can easily obtain health insurance and access to quality healthcare.
- Has compatible views with the intended parents on abortion and reduction, and lives in a state where reproductive care is available (or has a willingness to travel to a state that does).
- Is not on public assistance or in financial crisis.
- Does not have a criminal history (particularly in financial crimes, child abuse, substance abuse/addiction, and/or prostitution)

4) What goes in a gestational surrogacy contract?

- The contract covers all aspects of the gestational surrogacy process, and sets out the rights and obligations of each party before, during, and after the pregnancy.
- This assists parties in making ongoing conversations less awkward and setting framework and guidelines for what everyone can expect throughout the relationship and long into the future.

Topics include but are not limited to:

- Parental rights of intended parents (and lack of parental rights for the carrier and her partner)
- The way the embryos will be created and the conditions under which they will be implanted.
- The conduct of the carrier during the pregnancy
- Abortion/reduction decisions
- The location and conditions of delivery
- Availability of medical history about the carrier (and her husband, if applicable)
- Presence of the intended parents at appointments
- Medical decision-making authority
- What will happen in the event of death or divorce
- Compensation and payment of expenses
- Future contact/relationship between the parties
- Confidentiality.... and much more!

5) How does the compensation part work?

- The buying and selling of biological material, parental rights, and especially children is illegal in every state and on the federal level. So, the surrogacy contract explicitly makes it clear that those things are not happening in this scenario.
- Instead, the contract clarifies that the carrier will be compensated and/or reimbursed for her pain, discomfort, and pregnancy-related expenses.
- Often, there is an escrow agent involved. This is a company that holds all the money in a trust account and doles it out to the carrier according to the gestational surrogacy contract. This provides security to the gestational carrier that the intended parents can afford the process and have segregated the money from their other funds. It also helps all parties by removing a lot of the awkward conversations about money from the growing relationship between intended parents and gestational carrier.
- Most gestational carriers receive a “base amount” which is a larger number (\$35,000-\$60,000 range) that is paid out monthly starting at confirmation of pregnancy by fetal heartbeat. In addition to that “base amount,” there are many other stipends and reimbursements. Many surrogacy agencies post their “comp packages” online. You can do a search to get an idea of what a full surrogate compensation package might look like.

6) How much will a surrogacy journey cost?

Think of it as **5 Major Buckets**. The total cost of your journey will be the cost of all 5 buckets added together. The 5 Major Buckets are:

1. Medical Fees – this is the cost of your embryo creation through your fertility clinic plus the cost related to the formal medical and psychological screening of your gestational carrier. This bucket would include any and all donor fees as well.

2. Agency Fee – if you use a surrogacy agency to find your surrogate match, expect to pay approximately \$20,000-\$50,000 in agency fees just to the agency. Some agency fees include expenses like escrow management and legal fees for you and/or your surrogate. Other agencies make you pay those fees on top of the agency fee. So, when you're doing research on agencies, it's important to ask what their fees do and do not include to make sure you're comparing "apples to apples."

3. Health Insurance – if your surrogate's health insurance excludes coverage for surrogacy, you will have to buy her a replacement policy. There are several options for this, but this generally adds approximately \$15,000-\$32,000 to the overall cost of the journey. There are a lot of resources available to have your surrogate's policy professionally reviewed to see if it covers or excludes surrogacy. Your attorney or your agency should be able to provide guidance on this.

4. Surrogate Compensation – this is the "base compensation" payment to your carrier (usually \$35,000-\$60,000) depending on a wide variety of factors, plus any other stipends she may receive (maternity clothes, lost wages, fees related to invasive tests, embryo transfer, etc) as well as lost wages, childcare, and other reimbursements for any period of bedrest as well post-delivery recovery.

5. Professional Fees – these are the fees you pay to ancillary professionals like the lawyers and the escrow agent. For the legal fees, there are usually two stages. First, there's the contract stage. You'll pay for your own representation as well as an independent attorney to represent your gestational carrier. Then, after the first trimester of the pregnancy, there is the parentage order stage where your attorney will have a court confirm that you are the parents of your child and that the surrogate and her partner are not the parents. Again, you'll pay both your lawyer and hers.

7) What do I most need to consider when trying to match with a surrogate?

1. Health: Make sure she meets the minimum criteria above, and that her previous pregnancies were full-term and uncomplicated. Clinics will exclude surrogates who had pregnancy complications like pre-eclampsia, surrogates whose Body Mass Index is too high, and surrogates who delivered prematurely or have too many deliveries or C-

Sections (check with your reproductive endocrinologist if your prospective match has delivered 4 or more times and/or has had 2 or more C-Sections).

2. Health Insurance: If your gestational carrier doesn't have health insurance OR has health insurance that excludes coverage for surrogacy, you're likely going to be adding considerable cost to your journey to provide her with a policy that will cover the pregnancy. **Have a prospective match's health insurance reviewed professionally prior to moving forward.**

3. Compatibility: Make sure you're aligned on major issues like termination/reduction, relationship during and after the pregnancy, and compensation.

4. Geography: The closer your GC lives to you, the more involved you can be in the pregnancy. For some intended parents, it's desirable to go to every doctor appointment. For others, having the GC at "arms distance" feels more comfortable. Do some thinking about your priorities with regard to how close (or far) your carrier lives from you. Consider, also, that you will be travelling to her location to attend the birth of your baby and may have to stay in the location for some period of time immediately after the birth to attend to birth certificate or legal issues.

5. Gut feeling: This is a long and deeply personal journey. You and your carrier should feel comfortable with each other on a "gut feeling" level. If your gut is telling you that something is "off," you should listen and fully explore the match before making a commitment. Think about how you see this relationship both during the pregnancy and after the birth. Do you see this relationship as close, warm, and indefinite or do you take a more business-like or transactional approach? It's important that all parties are honest and up front about their expectations and comfort level.

8) What do all the acronyms mean?

"IVF" - In vitro fertilization - The union of eggs with sperm in a lab to create an **embryo** which is then transferred into the uterus of a woman.

"ICI" or "IUI" = Intracervical insemination or Intrauterine insemination

- ICI – the placing of sperm directly into a woman's cervix or reproductive tract to improve chances of pregnancy.
 - "Turkey baster method" – can be done at home.
- IUI – the placing of sperm directly into a woman's uterus while she is ovulating.
 - Done by a physician – do not try this at home.

"RE" - Reproductive endocrinologist - the type of doctor that does this stuff.

“GC” – Gestational Carrier or Gestational Surrogate or Surrogate – the woman that carries a child on behalf of another individual or couple who intend to raise the child. A gestational carrier is NOT genetically related to the child that she carries.

“GCA” – Gestational Carrier Agreement or **“GSA”** – Gestational Surrogacy Agreement – the contract that controls the relationship and the compensation

“IPS” – Intended Parents (the folks that intend to raise the baby). One or both may or may not be genetic parents as well.

“PBO” – PreBirth Order - a parentage order that the attorney obtains to have the IPs declared to be the parents, and have their names (and not the GC and her spouse) placed on the baby’s birth certificate. The process and cost of the PBO process will vary by state. It’s important to talk with an experienced Assisted Reproductive Technology (ART) attorney in the state where the birth is expected to take place.

9) How does the timing work?

Surrogacy is a master class in juggling all the balls in the air at the same time (but then again, so is parenting). My best advice for timing is to do as much as you can simultaneously. If you look at it as two separate processes (embryo creation on one side and surrogate matching on the other), I’d say to try to do them both at once. Work with your clinic to select donors, have extractions, make embryos and get them genetically tested while either engaging an agency or working independently to find a gestational carrier match. The matching process is long (4-12 months is the estimated wait time at most agencies). So, you want to take care of the other aspects of the journey as much as possible while you wait for the right GC match. With that said, if it’s overwhelming to do it all at once, then do one process at a time. Start with embryo creation as most GCs want to know that the intended parents actually have viable embryos to transfer before they go too far down the road with a match.

10) Where do I go from here?

As this is an introductory resource and not a handbook, I have to let you go here. But my parting advice is this:

1) Figure out who the general contractor is. If you look at building your family like building a house, you need a general contractor (acronym is also “GC” – so that’s handy) to coordinate all the moving parts and all the other professionals involved in the project. For surrogacy, the general contractor is usually the agency if you’re working with one. If you’re not, it’s likely either your ART lawyer, someone at your fertility clinic and/or you. DIY surrogacy is possible. But you’ll need a lot of professional guidance. Don’t be afraid to ask for help.

2) Push the professionals in your village to help you. Make them break information down into bite-sized pieces that you understand. **Ask a lot of questions.** If you need information repeated, ask to hear it again. Most people know nothing about surrogacy until they have to know everything about surrogacy. The right professionals for you will embody the 3 Cs - competent, communicative and compassionate.

3) Engage in self-care on a daily basis.

4) Take a break from the process if it becomes too stressful or overwhelming.

5) Don't be afraid to cry. But also, don't be afraid to hope.

OK, you've graduated from Surrogacy 101. Congratulations on taking this step! If there is a place for me in your village, I'd be honored to help you grow your family. You can find me at jennifer@villagelawgroup.com. If we never meet, then know that you're exactly where you need to be right now. You're fighting for your baby before he/she is even here. That means you're already an amazing parent. You've.Got.This.

All the best,

Jen