
PURPOSE

The purpose of this policy is to provide the staff with the information needed to appropriately handle the admission, banding, and custody of the infant in a surrogate situation.

DEFINITIONS

There are two methods of surrogate birth:

- 1. Childbirth involving a surrogate mother:** This method involves artificial insemination of an egg from the surrogate mother with sperm from the husband of an infertile woman (or other male donor). The fertilized egg is implanted in the surrogate mother. The surrogate mother is genetically related to the infant.

This type of surrogate birth is not sanctioned under Texas law, and any agreement entered into between the surrogate (and her husband if she is married) and the intended parents is probably unenforceable. Further, there is no mechanism under Texas law for the parties to obtain, in advance of the birth, a court order establishing the legal parents of the infant. In this type of surrogate birth, the surrogate mother is presumed to be the biological mother of the infant, and if she is married, her husband is presumed to be the biological father until such time as a court determines otherwise. As such, prior to the birth, the surrogate mother has the right to make treatment decisions for herself and for the unborn infant (including decisions to safeguard her health or the health of the unborn infants). Following birth, the surrogate mother (and her husband if she is married) also has the right to make treatment decisions for the infant and to authorize the infant's release to a third party, such as the intended parents.

- 2. Surrogate childbirth involving a host mother:** This method requires an egg to be removed from an infertile woman (or other female donor) and artificially fertilized with sperm from the husband (or other male donor). The embryo is then implanted in the womb of a host mother, where it develops until childbirth. The host mother is not genetically related to the infant.

Under Texas law, this is the only legally-sanctioned method of surrogate birth. Texas law authorizes the surrogate mother, also known as the "gestational mother" (and her husband if she is married) to enter into a gestational agreement with the infertile woman and her husband, also known as the "intended parents". Texas law also authorizes the gestational mother and intended parents to seek an order from the court validating the gestational agreement. The court order is usually obtained prior to the birth of the infant.

- a. Court order validating gestational agreement:** An infant born pursuant to a court-validated gestational agreement is considered under Texas law to be the infant of the intended parents. Typically, the court order validating a gestational agreement will declare the intended parents to be the parents of the infant upon birth. In some cases, the orders are more explicit and provide that the intended parents shall be named as the mother and father on the infant's birth certificate. Prior to the birth, the gestational mother has the right to make medical treatment decisions for herself and for the unborn infant (including decisions to safeguard her health or the health of the unborn infant). If the court order declares the intended parents to be the infant's parents, then following the birth, they have the right to make treatment decisions for the infant.
- b. No court order validating gestational agreement:** If there is no court order validating the gestational agreement, then under Texas law the gestational agreement is not

enforceable. Thus, the gestational mother is presumed to be the biological mother of the infant and, if she is married, her husband is presumed to be the biological father until such a time as a court determines otherwise. As such, prior to the birth, the surrogate has the right to make medical treatment decisions for herself and for the unborn infant (including decisions to safeguard her health or the health of the unborn infant). Following the birth, the surrogate mother (and her husband if she is married), has the right to make treatment decisions for the infant and to authorize the infants release to a third party, such as to the intended parents.

PROCEDURAL GUIDELINES

1. Upon notification that a legally-sanctioned surrogate birth is to take place, a member of the Women's Services Management will obtain the necessary contact information for the attending obstetrician, gestational mother (and her husband if she is married), and intended parents.
2. A meeting will be arranged with the following attendees: the social worker, a representative of Women's Center Management, the gestational mother (and her husband if she is married), and the intended parents. The purpose of the meeting is to discuss any potential or actual issues and develop a birth plan that will provide a positive birth experience for all parties involved. Once finalized, the birth plan will serve as a tool to guide the staff through the admission, delivery, care, and discharge of the various parties. At the meeting, the following issues should be addressed:

Legal Issues

- a. **Court order:** If there is a court order validating the gestational agreement, a certified copy should be obtained. The certified copy should be placed in the mother's chart and a regular copy placed in the infant's chart. If there is no court order, but there are plans to obtain a court order validating the agreement, explain to the gestational mother (and her husband if she is married) and the intended parents the process and any limitations or consequences if there is no court order in the chart at the time of delivery.
- b. **No court order:** If there is no court order, explain to the parties involved that under Texas law, the gestational mother is presumed to be the biological mother of the infant, and if she is married, her husband is the biological father. Therefore, regardless of any agreement between the parties, in the absence of a court order, the hospital will look to the gestational mother (and her husband if she is married) for decisions regarding the infant's care, will band the gestational mother (and her husband if she is married) with the infant in the delivery room, and will name the gestational mother (and her husband if she is married) as the parents on the birth certificate. The infant may be released to the intended parents at the time of discharge, if the gestational mother signs the **RELEASE OF INFANT TO THIRD PARTY** form provided by Hospital Medical Center at Frisco prior to the infant's discharge.

Decision Making Authority for Treatment

- a. **Prior to delivery:** Explain to the parties that prior to the delivery of the infant the gestational mother has the sole decision-making authority when it comes to clinical intervention and management of the pregnancy, labor and delivery, as well as sole decision-making as it relates to safeguarding her health or the health of the unborn infant.
- b. **Following delivery**

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- **If there is a court order** declaring the intended parents to be the infant's parents, then following the birth, the intended parents have the right to make treatment decisions for the infant.
 - **If there is NO court order**, then following the birth, the gestational mother (and her husband if she is married) has the right to make treatment decisions for the infant.

Access to the Gestational Mother in Labor and Delivery

It is up to the surrogate mother as to who will be allowed to visit her during labor and be present for the delivery. Expectations should be clarified, with an understanding that the gestational mother can change her mind anytime during the labor process. The hospital policy should be reviewed with regard to the number of visitors allowed in the labor and delivery areas.

- Arm banding** – discuss with the gestational mother (and her husband if she is married) and the intended parents, that as part of the security measures, the hospital has an arm banding system for infants and parents while the infant is in the hospital. Explain that there are only 3 bands available in the set, one for the infant and two adult bands. The bands will be placed on the intended parents if there is a court order validating the gestational agreement. The intended parents can elect to have one adult band placed on the gestational mother if that is acceptable to all parties. If no court order, the adult band will be placed on the gestational mother and she can elect who to receive the second adult band. Explain to the gestational mother and the intended parents that while the infant is in the hospital the nursing staff will only be able to leave the infant with a person wearing a matching arm band.
- Rooming In** – as the inpatient census allows, the intended parents will be provided a room to use to facilitate bonding. Explain to the intended parents what options are available if there are no rooms available.

Admission of the infant

If there is a court order: At the initial meeting with the intended parents and the gestational mother (and her husband if she is married), the surrogate mother should be preregistered. The surrogate's account should be flagged to alert management on the patient's arrival. The intended mother should also be preregistered (insurance and demographics for intended parents) into the Meditech system. At the time of birth, the infant should be registered under the **intended** mother's name.

- If there is NO court order: The infant should be admitted** under the gestational mother's (and father's) names because they are the presumed legal parents of the infant.

Access to Medical Information

- If there is a court order:** By virtue of being declared the parents of the infant in the court order, the intended parents are entitled to all medical information regarding the infant; however, unless the court order also allows the intended parents to have medical information about the gestational mother, it is the gestational mother's decision as to whether or not the intended parents may have access to her medical information. To authorize the release of such information, the gestational mother must complete and sign Hospital [REDACTED] **AUTHORIZATION TO**

RELEASE INFORMATION form. The social worker may copy those portions of the gestational mother's records as authorized by the gestational mother.. If the intended parents want a complete copy of the infant's records or the gestational mother has authorized release of a complete copy of her records, the Health Information Management department should handle the release of such complete copies.

- b. **If there is NO court order:** The intended parents are not entitled to any medical information about the infant or the gestational mother unless the gestational mother authorizes its release by signing Hospital [REDACTED]

AUTHORIZATION TO RELEASE INFORMATION form. The gestational mother will need to sign one form to release her information and a second form to release the infant's information. The gestational mother will need to indicate on each form what information she wishes to release to the intended parents. Typically, most intended parents are interested in obtaining the following information:

- Physician's Record of Newborn Infant
- APGAR Score
- Nurse's Admitting Record of Neonate
- Newborn Maturity Rating and Classification
- Labor and Delivery Record
- Admission Record of Labor and Delivery

Financial Arrangements

Financial arrangements must be made prior to admission. The gestational and intended parents should be given contact information for the Director of the Business Office, so that pre-admission and financial arrangements can be completed in advance.

Other Issues

Important issues to address include but are not limited to: breast or bottle feed, determining whether the infant's cord blood will be banked, addressing and attending available classes and car seat checks, and any other issues normally discussed with expectant parents.

3. At the close of the meeting, the gestational mother and the intended parents should be provided with the contact information for the social worker, Assistant Vice President of Women's Services and the Director of the Business Office
4. The surrogate mother and the intended parents are requested to submit a birth plan to be placed on the chart.
5. The gestational mother and the intended parents are requested to contact the social worker or the Assistant Vice President of Women's Services, if anything occurs that would significantly alter or impact the birth plan.
6. When the surrogate mother presents for delivery, the surrogate and the intended mother should be registered. The intended mother should be placed in a Temp bed in Meditech.
7. The business office should be contacted at the time the infant is discharged in so that the intended mother's account can be deleted.

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8. The Health Information Management (HIM) department should be notified, prior to the discharge of the patients, when a surrogate birth has occurred. This will allow HIM staff to ensure that the patient health records are labeled appropriately once the patient health record is received post-discharge in the HIM department.
 9. During the length of the hospital stay for the baby, careful attention should be given by the patient care staff to avoid documenting in the baby's health record the name and identifying information of the gestational carrier.