Management of Surrogacy Pregnancies Guideline

Guideline information

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Summary of document:
Some families may require the assistance of a surrogate in order to have children. Surrogacy is when a woman or birthing person carries a child for someone, with the intention that, at birth, the child will be

handed over to another person or persons. Intended parents (IPs) are couples who are considering surrogacy as a way to becoming a parent. To apply for a parental order (which is the way that legal parenthood is transferred from the surrogate to the IPs) at least one of the IPs in a couple must be a genetic parent of the child born to them through surrogacy. Intended parents generally prefer to be referred to as the parents of the child. Surrogates and IPs should be treated in the same way as any other people accessing healthcare during pregnancy and birth whilst recognising that there may be particular characteristics that may require a more tailored approach.

Scope:
The aim of this guideline is to provide the multi-agency team with clear guidance to facilitate the care for pregnant surrogate women and pregnant surrogate people, whilst appreciating the position of the intended parents, and where appropriate involve them in care.
From this point forward this guidance uses the term “woman” (pronouns she or her) to describe individuals whose sex assigned at birth was female, whether they identify as female, male or non-binary. It is important to acknowledge it is not only people who identify as women for whom it is necessary to access women’s health and reproductive services. Therefore, this should include people who do not identify themselves as women but who are pregnant or have recently given birth. Obstetric and midwifery services and delivery of care must therefore be appropriate, inclusive and sensitive to the needs of those individuals whose gender identity does not align with the sex that they were assigned at birth.

To be read in conjunction with:

Patient information:
Include links to Patient Information Library

Owning group:
Obstetric written documentation review group

Executive Director job title:
Clinical Lead Obstetrician for Hywel Dda University Health Board

Reviews and updates:
1 – new procedure
2 – fully revised

Keywords
Surrogate Pregnancy, Intended parents, Commissioning parents, Gestational carrier

Glossary of terms
BBA Born Before Arrival
IP Intended Parents
NBBS Newborn Blood Spot Screening
NIPE Newborn and Infant Physical Examination

Contents

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Aim

The aim of this guideline is to provide the multi-agency team with clear guidance to facilitate the care for pregnant surrogate women, whilst appreciating the position of the intended parents, and where appropriate involve them in care.

Objectives

The aim of this document will be achieved by the following objectives:

- Individualising care based on the needs of the women and families accessing care

INTRODUCTION

Some families may require the assistance of a surrogate in order to have children. Surrogacy is when a woman or birthing person carries a child for someone, with the intention that, at birth, the child will be handed over to another person or persons. Intended parents (IPs) are couples who are considering surrogacy as a way to becoming a parent. To apply for a parental order (which is the way that legal parenthood is transferred from the surrogate to the IPs) at least one of the IPs in a couple must be a genetic parent of the child born to them through surrogacy. Intended parents generally prefer to be referred to as the parents of the child. Surrogates and IPs should be treated in the same way as any other people accessing healthcare during pregnancy and birth whilst recognising that there may be particular characteristics that may require a more tailored approach.

Definitions

The Surrogacy Arrangements Act 1985 defines a surrogate mother as, ‘a woman who carries a child in pursuance of an arrangement’

a) Made before she is carrying the child and

b) Made with a view that any child carried in pursuance of it being handed over to, and parental rights being exercised (so far as practicable) by, another person or persons.

Surrogacy

Types of Surrogacy

• **Gestational/host Surrogacy** – The surrogate mother has no genetic link with the child but gestates embryos usually created from the eggs and sperm of the intended parents (or where applicable, donor eggs and/ or sperm).

• **Straight/partial Surrogacy** – This involves the surrogate's egg being fertilised with the sperm of either the intended parent or of a donor.

Legal Aspects of Surrogacy

• In the United Kingdom **whoever carries and births the baby is the legal mother irrespective of the conception method and genetic make-up of the baby unless and until the situation is altered by a Court Order** (s33 Human Fertilisation and Embryology Act 2008). Any spouse or civil partner of the surrogate mother will be the other legal parent (unless they did not consent to the conception) – see s35 and 42 of the 2008 Act.

Where the surrogate mother is unmarried, the biological father will generally be the legal father at common law, though s36 and 43 of the 2008 Act allow someone else to be nominated as the second parent instead.

- Surrogacy is not prohibited by law, though it is subject to various legal requirements. For example, surrogacy through commercial arrangements is prohibited by section 2 of the Surrogacy Arrangements Act 1985.
    - It is an offence for a third individual or agency to act on a profit-making basis to organise or facilitate a surrogacy arrangements for another person.

- Surrogate mothers can, however, receive reasonable expenses from the intended parents, such as maternity clothing, and travel expenses.
    - Surrogacy arrangements are not legally binding contracts and therefore the terms will not be legally enforceable by or against the parties to the arrangement.

What if the intended parents change their minds?

- If the intended parents change their minds about taking the child, for example if their circumstances change, the surrogate mother will be legally responsible for the child.
- In the event that the surrogate mother also declines to assume parental responsibility, Local Authority Children Services should be contacted in the usual way.

What if the surrogate mother changes her mind?

- If the surrogate mother changes her mind and wants to keep the baby, this must be respected. Where a surrogacy arrangement breaks down, the Court may be required to determine the child's living arrangements. In doing so, the child's welfare will be the paramount consideration.
- If there is a disagreement between the surrogate mother and the intended parents, then the HDUHB Corporate Child Safeguarding Team are to be informed

Parental Orders

This allows intended parents the opportunity to become the child's legal parents and obtain parental responsibility for the child.

It is necessary to meet certain criteria in order to apply for a Parental Order to be issued by the Court. The criteria includes[1]:

- Over 18
- Intended parent must be resident in UK
- At least one of the applicants must be genetically related to the child
- Apply after 6 weeks of birth and before 6 months
- The surrogate parents must consent to the making of the order
- No money other than reasonably incurred expenses must have been paid in respect of the surrogacy arrangement, unless authorised by the Court.
- The child must reside with the intended parent

Once the Parental Order is granted the intended parents will receive a new birth certificate stating that they are the legal parents of the child. The Parental Order extinguishes the legal parenthood of the surrogate mother.

General guidance

Health care professionals have a legal duty of care to the surrogate mother and the baby once born.

The wishes of the surrogate are paramount and the intended parents will only become involved with direct consent from her unless / until the situation is altered by a Court Order.

If care providers have any queries or concerns then this should be raised directly with the legal team within HDUHB

Further advice can be found on the UK Government https://www.gov.uk/government/publications/having-a-child-through-surrogacy/care-in-surrogacy-guidance-for-the-care-of-surrogates-and-intended-parents-in-surrogate-births-in-england-and-wales (opens in a new tab).

Safeguarding Aspects

Local Authorities are required to make enquiries when they are aware that a surrogacy arrangement exists so as to be satisfied that the baby is not, or will not be, at risk as a result of the arrangement.

If the surrogacy has been organised through a licensed clinic, assessment of the family in relation to safeguarding will have been undertaken prior to commencement of treatment.

Staff booking women who disclose a surrogate pregnancy will be required to establish how the arrangements/treatment was performed and if the clinic was licensed.

When arrangements for the birth and subsequent arrangements for the baby are unclear, the Local Authority Children's services and HDUHB Corporate Child Safeguarding Team must be informed

[1] The requirements are set out in s54 of the 2008 Act (in relation to a couple) and s54A of the 2008 Act (in relation to a sole applicant).

If there are any concerns about the case a safeguarding in pregnancy 2 report (SIP2) should be completed and a file generated following usual procedures.

Procedure

- When a member of staff is made aware of a pregnancy as a result of a surrogacy arrangement they must contact the named midwife/doctor or nurse with responsibility for Safeguarding to enable him/her to make enquires or make the necessary enquires to satisfy themselves of the legitimacy of the arrangement i.e. that the treatment was undertaken by a licensed clinic.

- If the treatment has been undertaken by a licensed clinic, local authorities can be assured that the treatment will have been in accordance with the HFEA Code of Practice.

- It is advised that written evidence is obtained and should be filed in the handheld All Wales Maternity Record. The intended parents may have written confirmation from the licensed clinic.

- Following consultation with the Named Midwife for Safeguarding Children If health professionals are satisfied that the Code of Practice has been followed the Local Authority Children Services need not be informed unless there are other concerns being expressed that might indicate that the child may be a risk.

- Where the circumstances of the conception and subsequent arrangements for the baby are not clear the parents should be informed of the need to inform the Local Authority Children Services to allow for further enquiries to be made.

- When there are safeguarding concerns a report (MARF) must be completed and submitted to the Local Authority Children / Adult Services in accordance with Wales Safeguarding Procedures 2019. A SIP2 must also be completed in line with the Sharing Information in Pregnancy Procedure (607).

- On receipt of the referral the Local Authority Children Services
- department will make such enquiries as they consider necessary to enable them to decide whether they should take any action to safeguard or promote the child's welfare.

- All enquiries will be undertaken in accordance with the Wales Safeguarding Procedures (2019) and Working Together to Safeguard the Welfare of Children 2000.

- In the event of the surrogate mother and intended parents arriving at hospital without prior booking, when the surrogate mother is in labour, both the Police and Local Authority Children Services should be informed immediately.

- This will allow for emergency action to be considered to promote the welfare of the child and ensure its immediate safety whilst further enquiries are undertaken.

Antenatal Period

Refer to the following government 'Care in Surrogacy' Guidance:

https://www.gov.uk/government/publications/having-a-child-through-surrogacy/care-in-surrogacy-guidance-for-the-care-of-surrogates-and-intended-parents-in-surrogate-births-in-england-and-wales (opens in a new tab)

1	Birth preferences discussion to be completed with the surrogate mother and intended parents
2	Include full details for the intended parents: • Their names and how they wish to be addressed as parents • Contact telephone numbers • Home address • Name and address of GP
3	Email the plan to: • Named Consultant Obstetrician • Operational Lead Midwife for Community • Operational Lead Midwife where the surrogate mother intends to give birth • Deputy Head of Midwifery • Named Midwife for Safeguarding • Surrogate mother's GP

Antenatal care

- Planning of care during pregnancy is vital so that the midwife ensures that the surrogate receives the care she requests and requires which may include involvement of the intended parents.

- The community midwife should make contact with the intended parents so she can make an assessment of the intended parents and the home the baby will be going to. The community midwife should also offer antenatal education to the intended parents, and support them to make decisions surrounding infant feeding. The intended parents may wish to induce lactation, therefore liaison with the GP and lactation consultant may be required

Birth Preferences

- The community midwife should ensure that they contact the Maternity Manager for the area the surrogate mother intends to give birth so that a meeting can be arranged which may include the attendance of:
    - □ Community midwife
    - □ Maternity manager
    - □ Surrogate mother
    - □ Intended parents
    - □ Labour Ward Manager
    - □ Postnatal Ward Manager

If necessary the following should also be invited:

- □ Safeguarding Midwife
- □ Consultant obstetrician

During the meeting the template in appendix 1 should be discussed and agreed.

Intrapartum Period

Refer to the following DoH 'Care in Surrogacy' Guidance:

https://www.gov.uk/government/publications/having-a-child-through-surrogacy/care-in-surrogacy-guidance-for-the-care-of-surrogates-and-intended-parents-in-surrogate-births-in-england-and-wales

Ensure that the midwife caring for the surrogate mother is aware of the plan.

- If the surrogate mother agrees the intended parents may be present at birth, but the wishes of the surrogate mother remain paramount.

Postnatal Period

Refer to the following DoH 'Care in Surrogacy':
https://www.gov.uk/government/publications/having-a-child-through-surrogacy/care-in-surrogacy-guidance-for-the-care-of-surrogates-and-intended-parents-in-surrogate-births-in-england-and-wales
(opens in a new tab)

Postnatal Ward staff are aware of the plan

- Two sets of postnatal notes should be used; one for the baby and one for the surrogate mother
- Check the intended parents discharge details
- Obtain address/email/telephone numbers for the following: community midwife, GP, health visitor
- On discharge ensure both surrogate mother and baby details are sent to the relevant community midwife.
- Inform the GP and health visitor of both the surrogate mother and the intended parents.
- Usually, the baby will be cared for by the intended parents following birth as the surrogate considers her role to be finished after the birth.
- Care should be taken to ensure that visiting guidelines and policies do not prevent intended parents from being able to care for their baby (overnight stays and use of side rooms should be considered)
- Particular care should be paid to the psychological wellbeing of the surrogate, and additional support offered. Additional postnatal visits may be beneficial and should be decided on an individual basis.
- The intended parents may require additional support relating to baby care and feeding. If an intended parent is inducing lactation, they should be admitted to the postnatal ward and provided with inpatient meals and support to establish feeding.

Monitoring

Any complaints received in relation to equality, diversity or human rights will be addressed on an individual basis and appropriate action taken.

References

1) Human Fertilisation and Embryology Act (HFEA) 2008; Human Fertilisation and Embryology (Parental Orders) Regulations 2018: Powers and Duties of Local Authorities, Health Authorities and Guardians ad Litem available at www.dh.gov.org/enPublications and statistics/LettersSmith's Law and Medical Ethics Seventh edition, Oxford University Press.
2) Department of Health and Social Care. 2021. Care in Surrogacy. https://www.gov.uk/government/publications/having-a-child-through-surrogacy/care-in-surrogacy-guidance-for-the-care-of-surrogates-and-intended-parents-in-surrogate-births-in-england-and-wales

Appendix 1: checklist of information to be included in surrogacy birth plan

Aim: to ensure that maternity care is appropriate for both the surrogate, as the woman receiving care, and IP(s) and to ensure that communication between them and the multi-professional maternity team is facilitated.

Where the surrogate and IP(s) are supported by a national altruistic surrogacy organisation, their documentation for birth planning can be used. Parties are encouraged to seek support and guidance from their organisation as needed.

Names and contact details

Surrogate name, date of birth and contact details.

IP(s)' name(s), date(s) of birth and contact details.

Where the surrogate has a spouse/partner, name and contact details.

Details of community midwife/midwives supporting surrogate and IP(s).

Birth-planning meeting

Date of surrogacy birth-planning meeting.

Who attended birth-planning meeting.

Which healthcare professional(s) the plan was created and agreed with.

Surrogate pregnancy details

Surrogacy organisation used (if any).

Form of surrogacy – straight or host.

Expected due date for child.

Summary of fertility treatment from clinic (if available).

Antenatal care

Confirm that all routine antenatal care has been/will be received.

Who will attend scans and appointments with the surrogate.

The birth

Where the surrogate would like to give birth, and what would happen in the instance of a BBA

The surrogate's birth partner.

Whether the IPs will be present

Who will attend the birth, if:

- Vaginal
- planned caesarean birth
- unplanned caesarean birth, epidural
- unplanned caesarean birth, general anaesthetic

Pain-relief options.

Who will advocate for surrogate if she can't speak during birth.

Handling of child at birth:

- cord cutting including intentions for delayed cord clamping
- skin-to-skin
- holding the baby thereafter

Post-partum care discussions

Who will care for the child following birth, and when and where will transfer of care take place.

Who will make medical decisions about care/treatment for child.

Feeding method:

- surrogate breast milk through expressed feeds
- intended parent breast milk
- donated breast milk
- formula

Name bands:

- what name appears on child's name band
- can IP(s) request one
-

Intended parent staying in the hospital, especially if intending to induce lactation
Admission to the Neonatal unit

Discharge of surrogate, IP(s) and child, including surrogate's wishes regarding early discharge if birth is uncomplicated.
Who the child will be discharged with.
Surrogate postnatal healthcare needs (assessment and care should include physical, emotional and mental health).
IP(s)' and baby's postnatal healthcare needs (for example, midwifery support with care of baby and feeding; assessment of, and support for, IP's emotional well-being and mental health).
NBBS where/ when this will be completed, does the surrogate mother need to provide written consent
Where surrogate, IP(s) and child will stay after birth, both in the immediate post-partum period and if longer stay is required (including possibility of amenity room for IP(s) and child following birth).
Parental Order

Registering the birth- Parental responsibility is joint if not married

Communication and consents

Confirm that the following professionals have been informed of the pregnancy and impending arrival of the child. Provide names and contact details of:

- surrogate's GP and community midwives
- IP(s)' GP, community midwives and health visitors

Confirm birth plan has been communicated with / made available to the following people, and provide their names and contact details to:

- head of midwifery at surrogate's local hospital
- supervisor / supervisory team at surrogate's local hospital
- maternity unit at surrogate's local hospital

Confirm that the appropriate professionals will be informed of the discharge of the surrogate and child following birth and relevant documentation sent to ensure appropriate and seamless care is provided to all:

- surrogate's community midwives, health visitors and GP
- IP(s)' local maternity hospital, community midwives, health visitors and local GP surgery
- 'Child health' information to include IP(s)' and their local GP's address and contact details to ensure information, for example vaccination appointments and so forth is addressed appropriately

Appropriate written consents from the surrogate for transfer of care for the child to the IP(s), for neonatal screening tests and for decision making for treatment.