

# **Reproductive Alliance Standards of Agency Conduct**

Final Draft  
March 3, 2022

The Reproductive Alliance (hereinafter referred to as “RA”) Standards of Conduct articulate guidelines of ethical professional behavior and establish accreditation, accountability, and quality of services for surrogacy agencies. Agencies receiving accreditation by Reproductive Alliance shall uphold this code of conduct and be held accountable to it.

These standards have, as its primary goal, the welfare and protection of the surrogates, intended parents, and resulting children that rely on surrogacy agencies’ actions to partner and guide them through the entire surrogacy process. These standards are developed in recognition of the financial expense and emotional component involved in a surrogacy match, thus seeking to compel agencies to aspire to the highest possible standards of conduct. The development of an accountable set of industry standards for professional conduct requires full commitment and transparency regarding work-related activities and business practices of the accredited agencies.

The technological and medical advances of reproductive medicine have led to explosive growth in the surrogacy industry without standardized regulatory oversight. Few states have enacted laws specific to surrogacy, [which have the potential to conflict with each other] and there is no federal umbrella of legal standards for agencies to follow. Reproductive Alliance is devoted to helping prospective parents make informed decisions regarding their choice of surrogacy agencies by upholding excellence in standards, recognition, and achievement through an unbiased, national accreditation program.

## **ARTICLE I. DEFINITIONS**

1. “Assisted Reproductive Technology (“ART”) is any medical or scientific procedures or treatments, used to achieve a pregnancy;
2. “Child” is an individual who was conceived through ART and gestated and delivered via a Surrogate;
3. “Intended Parent” is an individual or couple regardless of marital status who initiates medical procedures with the intent to be legally responsible for the Child;
4. “Surrogate” is a woman who agrees to gestate a fetus to term on behalf of Intended Parents without the intent to have any legal rights or responsibilities toward the Child;

5. "Agency" is a business entity including all owners, directors, managers, employees, and direct affiliates conducting professional services including, but not limited to:
  - a. Advertising, recruit and screen available Surrogates;
  - b. Matching screened Surrogates to Intended Parent(s);
  - c. Organizing, recommending, referring or managing coordinating medical service providers, legal teams, and psychological support;
  - d. Setting benefits packages containing financial expense breakdowns, commitments, and responsibilities;
  - e. Supervising medical appointments and supervising interpersonal relationships on an ongoing basis throughout pregnancy and delivery of a Child;
  - f. Assisting with organization and communications with medical staff for embryo transfer procedures, throughout pregnancy and coordinating with hospital staff at the time of the birth;
  - g. Ensuring issuance of proper medical releases and obtaining necessary records throughout the match;
6. "Fertility treatment" is any medical procedure or treatment necessary used to achieve a pregnancy;
7. "IVF Physician" is an individual licensed to practice medicine specializing in fertility treatment;
8. "IVF Transfer Procedure" involves the laboratory and medical treatments and processes to complete the transfer of an embryo to the uterus of a Surrogate;
9. "IVF Clinic" is a medical practice encompassing physicians and staff, specializing in fertility treatment and responsible for overseeing the IVF Transfer Procedure;
10. "Mental Health Provider" is an individual licensed to conduct mental health evaluations, consultations, and counseling and who holds a minimum of a master's degree or higher degree Ph.D, PsyD, MD, DO, DNP, MSW, MSN, MFT, MA, or MS in clinical psychology, psychology, psychiatry, social work, counseling, marriage and family therapy, or psychiatric nurse practitioner;
11. "Service Agreement" is a written contract between an Agency and Intended Parent(s), or Agency and the Surrogate, outlining services to be performed;

12. “Surrogacy Agreement” is a written contract between Intended Parent(s) and the Surrogate and her spouse or partner, outlining terms of the arrangement;
13. “Record” is a retrievable piece of tangible information memorialized in a written, and/or electronic form;
14. “Medical Information” is a record containing health information from a health care provider generated during medical treatment, consultation, diagnosis, or evaluation;
15. “Funds” is money belonging to the Intended Parent(s) or otherwise held in escrow for the purposes of paying items agreed to in the surrogacy arrangement.
16. “ASRM” is the acronym for the American Society for Reproductive Medicine, the professional medical organization specializing in Assisted Reproductive Technology;
17. “Conflict of Interest” is a situation in which a person has a duty to more than one person or organization but cannot do justice to the actual or the potentially adverse interests of both parties.

## **ARTICLE 2. STANDARDS**

### **Section 101 – GENERAL BUSINESS PRACTICES**

1. Agency must complete all relevant legal filings to properly establish their business entity in compliance with all applicable federal, state, and local laws and business licensing requirements;
  - a. Legal filings to include, without limitation:
    - i. Proof of ALL federal, state, and local business registrations. These include but are not limited to Certificate of Filing, Certificate of Existence, DBA, and/or a business license;
    - ii. Proof of Federal Tax Identification Number;
    - iii. Proof of annual renewal, if required by law;
2. Agency shall provide referrals to medical, legal, insurance, psychological, and other ancillary professionals as needed with third party reproduction experience specific to surrogacy;
3. Agency business practices must be conducted and presented in a non-discriminatory manner, free of fraud, misrepresentation, and coercion;

4. Agency shall complete continuing education activities per Reproductive Alliance policies. Continuing education is required for principal members, directors, owners and agency management;
5. Agency shall make reasonable efforts to retain the records related to all Surrogacy Arrangements for a minimum of six years;
6. Agency shall allow both Intended Parents and Surrogates to make their own choice regarding legal representation, so long as the attorney is experienced in the area of Assisted Reproductive Technology Law. Agency shall not set policies that are financially coercive to Intended Parents or Surrogates in regard to their choice of legal counsel. Agency may provide both Surrogate and Intended Parents a list of attorneys that practice in the area of reproductive technology law and shall provide adequate choices and shall disclose any and all agency relationships, conflicts of interest and/or preferred partnerships to both Intended Parents and Surrogates;
7. Agency shall only provide surrogacy management services for persons based upon medical necessity. Agency shall require verification of medical necessity;
8. Agency shall carry professional liability insurance with a minimum amount of \$500,000, and any additional coverages as required by state and federal law. Cyber insurance is strongly recommended;
9. Agency shall report any lawsuits, whether criminal or civil, filed against them within 30 days of the triggering event. Such reportings will be held in strictest of confidence. Agency shall report the resolution of any matters, be they criminal, civil, within thirty days of the resolution;
10. Agency will obtain written consent before publishing Parties' images, names or potentially identifying information on any social media.

#### **Section 102 – RELEASES, INFORMED CONSENT AND DISCLOSURES**

1. Agency shall provide informed consent to Intended Parent(s) and Surrogate to include, but is not limited to, gathering relevant medical information, health and psychological records, as needed for the match and for the IVF Physician and their representatives;
2. Agency shall advise Intended Parent(s) and Surrogate in writing of their right to seek legal counsel before entering into their Service Agreement;
3. Agency shall act with a high level of care to maintain the confidentiality of personal information with integrity, through their own protective policies and procedures for obtaining necessary external HIPAA releases for disclosures of

- documented health histories and medical and mental health records which are subject to medical record confidentiality requirements;
4. Agency shall obtain authorization for release of Medical Information prior to requesting from or to an outside entity;
  5. Agency shall ensure that full disclosure of any relevant communicable diseases and/or HIPAA-protected conditions (e.g. HIV positive status, hepatitis, syphilis, and/or positive infectious disease status), insofar as the Agency is aware, are duly disclosed mutually to all parties to the arrangement at the time of the match;
  6. Agency shall complete a full criminal and civil background check on all intended parents, surrogates, adults over the age of 18 living in the household of the intended parent(s) and surrogate, and any sexually intimate partners. Agency shall ensure any adverse findings are disclosed mutually to the parties to the arrangement so they may make an informed decision regarding moving forward with the match;
  7. Agency shall do its due diligence in verifying the true and complete identifying information of the Parties including legal names, state and/or country of legal residence and current marital status;
  8. Agency shall facilitate a conversation between all Parties regarding the number of embryos it is the Intended Parents' intent to transfer per transfer attempt. In the event a multiple embryo transfer is recommended by the IVF physician, Agency will document that all parties discussed the possibility of increased risks involved with multiple pregnancy and were encouraged to consult an appropriate medical professional about those risks;
  9. Agency shall recommend disclosure as to the genetic source of gametes utilized for embryo creation to the Surrogate;
  10. Agency shall make reasonable effort to recommend that Parties seek clear medical advice from an IVF Physician, medical clinic and/or licensed health care provider to ensure that the potential risks and outcomes of the desired medical treatments are fully explained;

### **Section 103 – ADVERTISEMENTS AND RECRUITMENT OF SURROGATES**

1. Agency shall not knowingly attempt to recruit a surrogate who has already agreed to work with another Agency; Agency shall do due diligence to discover if a Surrogate is utilizing another agency;

2. Agency shall not utilize advertising or marketing strategies that intentionally interfere with another Agency and/or knowingly competitively attempt to recruit a surrogate who already agreed to work exclusively with another Agency;
3. Agency shall not assess fees or penalties to parties who do not wish to utilize the Agency for a subsequent sibling journey with the same Surrogate;
4. Agency must not engage in advertising or marketing strategies that are inaccurate, coercive or misleading. Unrealistic financial gain, such as advertisements that do not differentiate between surrogate compensation and items that are reimbursements shall be considered a coercive tactic;
5. Advertisements that specify compensation benefits must comport with industry standards and not otherwise lump other contingent fees and expenses in an overall promise of payment to a Surrogate;
6. Agency must provide a benefits package to the Surrogate. It must be itemized including the timing of payments. Agencies offering bonus or other financial incentives for signing with an agency or other screening milestones, shall clearly state terms of bonus or incentives, such as repayment terms, and if the bonus or incentive is considered to be a portion of base compensation. Terms should be clearly and obviously stated on website and printed materials;
7. Agency website shall include the following:
  - a. Identity of principal members;
  - b. Identity of owners, directors, and staff members;
  - c. Full contact information;
  - d. Full disclosures regarding how Intended Parents' funds are held and managed (e.g., whether deposited with a 3rd Party insured, bonded escrow company or through an attorney-client trust account) out of protection for all parties to the arrangement;
  - e. Disclosure of any affiliated businesses or potential conflict in which the Agency has any financial interest, or with which the Agency has any form of a joint venture or referral agreement.
8. Agency, Agency Owner or relative of an Agency Owner shall not internally and/or independently hold Intended Parent's funds. Funds should be held by a neutral, third-party entity, over which neither the Agency nor its owners, officers, directors, or employees has any ability to exercise direct or indirect control;

9. Agency advertisements must be truthful regarding the timing and availability of a particular Surrogate or Intended Parent(s), presence of any potential waiting list, and/or current status of a specific match;

#### **Section 104 – INITIAL INTENDED PARENT (S) SCREENING REQUIREMENTS**

1. An Agency must complete initial screening of Intended Parent(s) prior to presenting their profile to the Surrogate which includes but is not limited to;
  - a. Provide orientation of the surrogacy process and specific details about the Agency including anticipated costs;
  - b. Psychological consultation;
  - c. Criminal and civil background check;
  - d. Documentation showing medical necessity;
  - e. Discussion and action plan regarding health insurance for the newborn and/or expenses for Intended Parents' baby at the time of birth;
  - f. Proof of age;
  - g. Proof of marital status, if applicable;
  - h. Source of gametes;

#### **Section 105 – INITIAL SURROGATE SCREENING REQUIREMENTS**

1. Agency must complete initial screening of Surrogate prior to presenting her profile to the Intended Parent(s), this includes but is not limited to;
  - a. Agency shall collect all relevant medical history for the IVF clinic, which includes but is not limited to:
    - i. available prenatal records for each past pregnancy, regardless if a delivery occurred, through three months postpartum;
    - ii. available hospital records for each past pregnancy, encompassing the entire term of pregnancy;
    - iii. previous IVF monitoring, cycling, and transfer records if applicable;
    - iv. general health histories and questionnaires requested by the IVF clinic;
    - v. prescription histories, if applicable;

- b. Agency shall collect relevant medical data in a way that provides true and correct information that is not altered, deleted, or intentionally misleading so that it is true and correct to the best of their ability. Collecting records directly from the Surrogate's provider should be attempted prior to other methods;
- c. Agency shall complete a full background check on the Surrogate, her Spouse, live-in Partner, or any other sexually intimate partner, and any adult 18 or older living in the home (if any) which shall include a comprehensive search of criminal charges, DMV records, state and federal civil complaints or penalties, judgments, and evictions. The background checks should be performed by a private investigator or entity insured and licensed to obtain such information;
- d. Agency shall enforce a policy in which if a Surrogate, or her dependents, are receiving or are dependent upon income based government assistance in the form of housing, food stamps, or cash aid, are not eligible to participate in the Agency's program;
- e. Agency shall require assurance from the Surrogate, in writing, that she and/or her dependents are not receiving income based government assistance in the form of housing, food stamps, or cash aid;
- f. Agency shall make reasonable attempts to ensure Surrogate and her spouse or live-in partner (if any) are not entering into a surrogacy arrangement as a primary means of financial support. Agency may confirm through reasonable means such as a financial background check, credit check, income verification or similar;
- g. Agency shall ensure compliance with the most current published ASRM guidelines for potential Surrogates regarding eligibility including but not limited to:
  - i. the age of the Surrogate;
  - ii. number of previous deliveries;
  - iii. U.S. Citizenship or legal residency status;
  - iv. presence of a strong support system and stable family environment;
  - v. past and/or current medical and mental health conditions of the Surrogate and Spouse, if applicable.

## **Section 106 – AGENCY SERVICE AGREEMENTS**



1. Agency service agreements shall be formalized in writing and clearly identify the names of the Intended Parent(s), the true and correct registered business name and all other d/b/a or trade names, and disclose full contact information, permanent address, email and the name of the director or main contact person;
2. Agency service agreements must openly disclose any unique corporate relationships, ownership and/or financial interests between any staff member and the Agency itself which could create a potential or existing conflict of interest;
3. Agency service agreements shall explain the collaborative nature of managing a surrogacy arrangement and the Agency role in shared communications between Intended Parents and Surrogates which could create a potential or existing conflict of interest;
4. Agency service agreements shall explain the collaborative nature of managing a surrogacy arrangement and the Agency role in shared communications between medical professionals, legal professionals, Intended Parents and Surrogates which could create a potential or existing conflict of interest;
5. Agency service agreements shall provide a complete and detailed outline of the responsibilities and duties of the Agency, as well as any duties that the Agency shall not perform or does not otherwise take responsibility for;
6. Agency service agreements shall disclose the full and complete fee structure paid to the Agency for the services provided, disclose when such funds are considered earned and received, and under what circumstances funds may be returned, refunded, or services provided without future payment in the event of a rematch;
7. Agency service agreement shall detail that a financial service provider, separate from the agency itself, shall be responsible for holding Intended Parents' funds, whether an insured, bonded escrow company or held in an attorney-client trust account;
8. Agency service agreements shall disclose the methodology for record-keeping which shall be in compliance with state and federal privacy laws including HIPAA, the extent and time period records will be maintained by the Agency, as well as the extent such records shall be subject to medical record confidentiality requirements;
9. Agency service agreements should notify Intended Parent(s) and Surrogates of their right to seek independent legal counsel prior to executing the service agreement and encourage them to do so;

10. Agency service agreements shall state and recommend that All Parties seek the independent advice of insurance experts well versed in the surrogacy industry to identify the best potential major medical insurance, life insurance or life insurance equivalent, and disability coverage, as applicable, as well as associated fees and costs;
11. Agency shall ensure that Parties engage in discussions with insurance professionals skilled in the area of surrogacy to evaluate insurance options and receive confirmation that a plan is in place for securing major medical insurance and/or verify payment arrangements for prenatal and delivery medical expenses.

### **Section 107 – SURROGATE MEDICAL HEALTH EVALUATION AND SCREENING**

1. Agency shall provide all medical records obtained for the purposes of Initial Surrogate Screening to the IVF Clinic. Agency must disclose, to the IVF Clinic and to the Intended Parent(s), any records that are unavailable, altered or show evidence of tampering before the medical health evaluation and screening begins;
2. Agency shall disclose to all Parties that medical evaluations and screenings should be completed to the extent recommended by current ASRM published guidelines<sup>1</sup>, and in compliance with the specific IVF Physician and clinic designated by the Intended Parents. Screenings completed by the IVF Clinic *may* include, but are not limited to:
  - a. complete physical evaluation by a qualified medical professional;
  - b. infectious disease testing of the Surrogate;
  - c. infectious disease testing of any individual that is sexually active with the Surrogate;
  - d. uterine cavity evaluation by Saline infusion sonohysterogram, or similar;
  - e. preconception testing, including cervical or breast health screening per the guidance of the American College of Obstetricians and Gynecologists;
  - f. comprehensive drug screen for both the Surrogate and their partner;
  - g. relevant or applicable vaccine and/or booster status;

---

<sup>1</sup> [https://www.fertstert.org/article/S0015-0282\(16\)63005-4/pdf](https://www.fertstert.org/article/S0015-0282(16)63005-4/pdf)

- h. psychological evaluation and counseling by a qualified mental health provider for the Surrogate and their live-in Partner/Spouse;
3. Agency shall make reasonable effort to coordinate the Surrogate's attendance at all required appointments;
4. Agency shall make reasonable effort to coordinate communication between all Parties to ensure proper mutual disclosure and to protect the health of all Parties and a resulting Child.

### **Section 108 – MENTAL HEALTH EVALUATIONS AND SCREENING**

1. Agency shall ensure that a Surrogate (and her Spouse or live-in Partner, if any) completes a mental health screening and consultation in accordance with the most recent published standards of ASRM with a favorable and recommended written clearance provided to the IVF clinic prior to entering into legal contract negotiations;
2. Agency shall ensure that the mental health evaluation, screening and clearance is completed by a licensed mental health professional trained in the treatment of infertility including but not limited to, grief counseling, supportive counseling, decision making counseling, psychometric test administration and interpretation; support group counseling, reproductive endocrinology education and consultation; third party evaluation and implications counseling;
3. Agency shall only recommend Mental Health practitioners with the following minimum requirements:
  - a. Hold a minimum of a master's degree or higher degree Ph.D, PsyD, MD, DO, DNP, MSW, MSN, MFT, MA, and MS in clinical psychology, psychology, psychiatry, social work, counseling, marriage and family therapy, or psychiatric nurse practitioner;
  - b. Proficiency and completed training in psychological testing;
  - c. Have a current and active license (registrations/certification where applicable) in all states where providing evaluations and testing in the mental health field where they hold an advanced academic degree and in accordance with state federal laws, and professional organizations recommendations;
  - d. When providing telehealth consultations, the mental health practitioner must follow applicable federal and state laws and professional organizations standards;

- e. Have extensive knowledge of the medical, legal, and psychological aspects of surrogacy and egg donation; knowledge of Federal and State specific legislation governing ART technologies and surrogacy;
4. Agency shall make available referrals to mental health professionals, at regular intervals, and encourage and recommend individual and/or collaborative counseling for all Parties. Agency shall recommend and direct Parties to specific counseling sessions as needed for conflict resolution, or in the event that the Agency identifies a traumatic or emotionally charged issue or incident that occurs during the match and/or pregnancy;

**Section 109: REFERRALS, SURROGACY AGREEMENTS, AND PARENTAL FILINGS**

1. Agency shall ensure that all Parties retain independent legal counsel skilled in reproductive law to specifically and validly represent their interests;
2. Agency shall ensure that the Surrogate (and her Spouse or live-in Partner, if any) may be jointly represented but must have counsel separate and independent from counsel for Intended Parents. The Intended Parent(s) may be jointly represented but must have counsel separate and independent from counsel for the Surrogate (and her Spouse or live-in Partner, if any);
3. For the contract phase, Agency shall refer Intended Parent(s) and Surrogate to attorneys licensed in a state where the Intended Parents(s) reside, where embryo transfer will take place, or where the parties anticipate the Child will be born and shall refer all Parties to an attorney licensed in the state where the parties anticipate the Child will be born;
4. Agency shall ensure that the integrity of the financial benefits package specifically agreed to in the course of the match between the Intended Parents and the Surrogate is validly expressed and maintained in the Surrogacy Agreement executed by the Parties and that no Party is subject to any kind of pressure or coercion in agreeing to legal terms or entering into the contracts;
5. Agency shall reasonably ensure the Surrogacy Agreement permits the Surrogate to make all health and welfare decisions regarding herself and her pregnancy, including decisions on abortion or reduction, even if they conflict with the wishes of Intended Parents;
6. Agency shall make all Parties aware that while the choice of obstetrician should ideally be mutually acceptable to all Parties, the Surrogate is to be the

- sole source of consent for their treatment from time of hormonal preparation and embryo transfer through delivery and aftercare;
7. Agency shall not place limits on the amount of fees that may be paid for legal services to the Surrogate in its agreements with or between the parties to the surrogacy arrangement;
  8. Agency will recommend against a surrogate starting IVF cycle related medications (exclusive of birth control) prior to completion of legal clearance and agreement on terms, rights and obligations;
  9. Agency shall assist in the establishment and funding of escrow in accordance with agreed Surrogacy Agreement contract terms, but no less than an amount equal to the Surrogate's base compensation amount, prior to the start of IVF cycle related medications (exclusive of birth control) to begin an embryo transfer procedure;
  10. Agency shall ensure both Intended Parents and Surrogate have access to independent legal counsel licensed in the delivery state at the Parentage Phase;
  11. Agency shall notify Attorneys representing all Parties when the fertility clinic releases the Surrogate's care to her obstetric provider, or no later than 18 weeks of pregnancy. Agency will maintain communication with the legal team and all Parties to assist, if indicated, with formally establishing the parental rights and responsibilities of the Intended Parents so that documentation is obtained at a time deemed appropriate and valid in accordance with state law, and with ample time to ensure that the hospital and state vital records department have legal authority to recognize the Intended Parent(s) as the sole legal parent(s);
  12. Agency shall ensure that Attorneys practicing in Post-Birth Order states are notified in writing of the Child's delivery birth within 24 hours of the event.