

# **Reproductive Alliance Standards of Agency Conduct**

## **Public Comment Response**

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 and surrogates 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 person 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, recruiting and screening Surrogates;
  - b. Matching screened Surrogates and Intended Parent(s);
  - c. Organizing, recommending, referring or managing coordinating medical service providers, legal teams, and psychological support;
  - d. Suggesting benefits packages containing financial expense breakdowns, commitments, and responsibilities;
  - e. Coordinating medical appointments and facilitating 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; this may include other fertility care providers such as midwives or OB/GYN providers
  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. “Conception Procedure” involves any procedure to achieve pregnancy for a surrogacy pregnancy, typically supervised by an IVF Physician or other fertility care provider;
  10. “IVF Clinic” is a medical practice encompassing physicians and staff, specializing in fertility treatment and responsible for overseeing the IVF Transfer Procedure or Conception Procedure;
  11. “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;
  12. “Service Agreement” is a written contract between an Agency and Intended Parent(s), and/or Agency and the Surrogate and her spouse or partner as indicated, outlining services to be performed;
  13. “Surrogacy Agreement” is a written contract between Intended Parent(s) and the Surrogate and their spouse or partner, outlining terms of the arrangement;

14. “Record” is a retrievable piece of tangible information memorialized in a written, and/or electronic form;
15. “Medical Information” is a record containing health information from a health care provider generated during medical treatment, consultation, diagnosis, or evaluation;
16. “Funds” is money held in escrow for the purposes of paying items agreed to in the surrogacy arrangement.
17. “ASRM” is the acronym for the American Society for Reproductive Medicine;
18. “Conflict of Interest” is a situation in which a person has an obligation to more than one person or organization but and potentially cannot do justice to the actual or the potentially adverse interests of both parties.
19. “Direct Affiliate” is each direct and indirect subsidiary of a Company and each person controlled by the Company or collectively by the Company and its direct or indirect Subsidiaries. This can include what are commonly or colloquially referred to as “recruiters.”
20. “Coercion” is compelling a party, through unethical means, to act in a way or do something that they might otherwise be unwilling to do.
21. “Preferred Partnership” is a company or person that is the primary choice of referral or business partnership or that gives a rebate, commission or preferential fee reduction for use of their services.
22. “Compensation” is the minimum base amount a Surrogate will receive for completion of Surrogacy services as specified in the Surrogacy Agreement, not including any milestone, contingent or expense reimbursement payments.
23. “Contingent Fees” are those payments to a Surrogate that depend on certain contingencies occurring for payment. (e.g., loss of organs, lost wages, doctor-ordered bed rest, etc...)
24. “Expense Reimbursements” are payments reimbursing a Surrogate for actual expenses incurred. (e.g, medical appointment cost, insurance premium, etc...)
25. “Compensation Package” is the delineation of Compensation plus all payments a Surrogate may receive for certain milestones reached or completed per the Surrogacy Agreement (e.g., nonaccountable monthly allowance, breastmilk pumping, medication start, embryo transfer, etc...).

## **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 that are known to have experience specific to third party reproduction. Any conflicts of interest shall be clearly stated;
3. Agency business practices must be conducted and presented in a manner that is, 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, and active agency management;
5. Agency shall make reasonable efforts to retain the records related to all Surrogacy Arrangements for a minimum of seven years;
6. Agency shall encourage both Intended Parents and Surrogates to make their own choice regarding legal representation, so long as the attorney is experienced and has expertise 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. Agency shall disclose any and all agency relationships, conflicts of interest, both real and potential, and/or preferred partnerships to both Intended Parents and Surrogates;
7. Agency shall disclose to a Surrogate the Intended parents' stated reason or need for use of a surrogate so the Surrogate may make an informed decision;
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
9. Agency shall report to Reproductive Alliance any lawsuits, whether criminal or civil, filed against them within 30 days of notification of said filing. Such reportings will be held in the 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 obtain appropriate permissions from Intended Parent(s) and Surrogate to include, but not limited to, activities such as gathering relevant medical information, health and psychological records, as needed for the match, surrogacy 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 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;
  - a. Agency shall obtain authorization for release of Medical Information prior to requesting from or releasing to an outside entity;
4. Agency shall make reasonable inquiries of all parties regarding any relevant communicable diseases and/or HIPAA-protected conditions (e.g. HIV positive status, hepatitis, syphilis, positive infectious disease status, autoimmune disorders, etc...).
  - a. Insofar as the Agency is aware of them, such results shall be disclosed mutually to all parties to the arrangement at the time of the match, or as soon as possible after the condition is disclosed;
5. Agency shall complete a background check on all intended parent(s), surrogates, adults over the age of 18 living in the household of the intended parent(s) and/or surrogates, and any relevant sexually intimate partners of the parties, prior to matching.
  - a. A background check shall include a comprehensive search of criminal charges, state and federal civil complaints or penalties, judgments, evictions, and DMV records, if obtainable;
  - b. The background check should be performed by a private investigator or entity insured and licensed to obtain such information;
  - c. Agency shall disclose significant adverse findings to the parties and other relevant professionals;
  - d. Agency must do their best to obtain a background check on International Intended Parent(s) similar to described above. If unable to do so, disclosure must be provided to the Surrogate and other relevant professionals;
6. Agency shall make reasonable efforts to verify the true and complete identifying information of the Parties including legal names, state and/or country of legal residence and current marital status;
7. 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 were encouraged to consult an appropriate medical professional about risks;

8. Agency shall recommend disclosure as to the genetic source of gametes utilized for embryo creation to the Surrogate;
9. 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 assess fees or penalties to parties who do not wish to utilize the Agency for a subsequent journey, whether with the same Surrogate as the previous journey or a different Surrogate;
2. Agency must not engage in advertising or marketing strategies that are inaccurate, coercive or misleading. Advertisements that do not differentiate between surrogate compensation and items that are reimbursements shall be considered misleading;
3. Advertisements that specify compensation benefits must not otherwise lump other contingent fees and expenses in an overall promise of payment to a Surrogate;
4. Agency must provide a suggested benefits package plan to the Surrogate, including the base compensation, contingent fees and reimbursable expenses prior to the Surrogate signing with Agency.
  - a. It must be itemized including the timing of payments.
  - b. This document must include information that the terms of the suggested benefits package are not finalized until the Surrogate signs the Surrogacy Agreement directly with Intended Parent(s);
  - c. 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.
5. Agency website shall include the following:
  - a. Identity of managing directors, and key staff members;
  - b. Full agency business contact information;
  - c. Full disclosures regarding how 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;

d. Disclosure of any affiliated businesses or potential conflict in which the Agency has any common ownership or potential financial interest, or with which the Agency has any form of a joint venture or formal referral agreement.

6. Agency, Agency Owner or relative of an Agency Owner shall not internally and/or independently hold escrow 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;

#### **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 consultation and orientation of the surrogacy process and specific details about the Agency, including anticipated costs;
  - b. Psychological consultation;
    - This consultation may frequently not be completed before presentation of profile. In no event should it be completed later than the start of the legal process.
  - c. Criminal and civil background check (as outlined in Section 102(5));
  - d. Discussion and action plan regarding health insurance for the newborn and/or expenses for Intended Parents' baby at the time of birth;
  - e. Proof of age;
  - f. Disclosure marital status, if applicable;
  - g. Disclosure of origin gametes;

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

1. Agency must, prior to presenting a surrogate profile to the Intended Parent(s), complete initial screening which includes, but is not limited to;
  - a. Agency shall make reasonable attempts to collect all relevant medical history, 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, if applicable;

- v. specialist visits, if applicable;
- b. Agency shall collect and present relevant medical data in a way that provides true and correct information, to the best of Agency's ability. Agency shall make every attempt to collect relevant medical data directly from a Surrogate's providers. When presenting records are not obtained directly from a Surrogate's providers, Agency shall note and disclose how the medical data was obtained;
- c. 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 food stamps or cash aid, are not eligible to participate in the Agency's program;
- d. Agency shall require written disclosure from the Surrogate that she and/or her dependents are not receiving income based government assistance in the form of food stamps or cash aid;
- e. Agency shall make 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. A basic personal financial statement from a Surrogate is enough to meet this requirement;
- f. Agency shall strive to follow the most current published ASRM guidelines regarding Surrogate eligibility criteria. Should a potential Surrogate or Intended Parent(s) not meet ASRM guidelines, Agency shall disclose the status that is outside of guidelines to all relevant parties, including but not limited to Surrogate, Intended Parent(s) and fertility treatment providers;

### **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 the permanent business 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. Agencies should list all additional common potential fees and amounts in the Agreement;
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, if applicable, 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;

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 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. Have knowledge and experience with 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 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 make reasonable attempts to refer both Intended Parent(s) and Surrogate to attorneys licensed in a state where the parties anticipate the Child will be born. At a minimum, at least one representing attorney must be 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 to the attorneys representing the parties in the Surrogacy Agreement to make reasonable attempts to ensure 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 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;
6. 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;
7. 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;
8. 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;

9. Agency shall ensure both Intended Parents and Surrogate have access to independent legal counsel licensed in the delivery state at the Parentage Phase;
10. 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);
11. 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.