

## Surrogates' Medical and Mental Health Screening:

Potential surrogates must meet New York State screening requirements to see if they can serve as a gestational surrogate. NYS law requires health care providers who offer care to gestational surrogates to follow the Department of Health's clinical best practices when the screening is conducted.

If you have been asked to undergo screening and you are not sure if some of the questions are appropriate, please visit DOH guidelines on screening best practices at:

[health.ny.gov/community/pregnancy/surrogacy/docs/gestational\\_surrogacy\\_guidelines.pdf](https://health.ny.gov/community/pregnancy/surrogacy/docs/gestational_surrogacy_guidelines.pdf)

**Screening Intended Parents:** If you are a potential intended parent, you will also be screened to make sure you are ready to begin the surrogacy process. This includes being physically, mentally, and legally capable of parenting. The process also makes sure you can afford potential costs related to the surrogacy process.

If an intended parent is providing the egg or sperm, you may be screened for various health issues, as well as genetic conditions.

## Surrogacy Agreements Without a Gestational Surrogacy Organization:

The Child-Parent Security Act also applies when the surrogate and intended parent(s) enter into a private surrogacy agreement without using a Gestational Surrogacy Organization. This may happen when a surrogate offers to carry a child for a friend, relative, or unknown couple; or when the gestational surrogate is not paid. This is also known as an "altruistic surrogacy."

If you plan to enter into a surrogacy agreement without the help of a Gestational Surrogacy Organization, you should still know your rights. Specifically, you are encouraged to:

- Read and understand the Gestational Surrogates' Bill of Rights. [health.ny.gov/community/pregnancy/surrogacy/surrogate\\_bill\\_of\\_rights.htm](https://health.ny.gov/community/pregnancy/surrogacy/surrogate_bill_of_rights.htm)
- Ask your health care provider, for example, a fertility specialist or OB-GYN, to follow the NYS Department of Health's [Surrogacy Screening Guidelines and the Clinical Best Practices](#).

## Important Notices:

Having a written agreement can help protect all parties and the child born through surrogacy. This is true even if the surrogate and intended parent(s) are friends or relatives.

A surrogacy agreement may not be able to be enforced under New York State law if it does not comply with the CPSA. Hiring an attorney to ensure that your Agreement meets the legal requirements can help protect you. This is true if you are a potential intended parent or a potential gestational surrogate.

If agreements do not comply with the CPSA, a court may need to decide important issues like who the legal parent is or whether the surrogate must be paid.

More information on gestational surrogacy is available from the New York State Department of Health:

[The New York State Child-Parent Security Act: Gestational Surrogacy](#)



## Information for Gestational Surrogates and Intended Parents

This flyer offers general information about the legal rights and protections for gestational surrogates and intended parents under an act called CPSA, or Child-Parent Security Act. CPSA made gestational surrogacy legal in New York State and is the first law of its kind in the nation. The CPSA sets a standard for what protections should be included within the surrogacy agreement between the gestational surrogate and intended parent(s).



Department of Health

## What is Gestational Surrogacy?

It is a process where a person carries and gives birth to a baby created through in vitro fertilization (IVF) for another person or couple (intended parent(s)). The surrogate does not provide their own egg. This means they are not related to the child genetically. IVF is where the eggs of the parent or donor are fertilized with sperm of the parent or donor in a laboratory. The embryo is then placed in the surrogate's uterus.

## What is an Intended Parent(s)?

An intended parent is a person or couple who plans (intends) to become the legal parent(s) of a child born through gestational surrogacy. Commonly, intended parent(s) are not able to have children on their own. This may be due to infertility, health conditions, or being same-sex couples. The CPSA provides a simple path to establish legal parental rights for parents who rely on assisted reproductive technology (ART) to have children.

## Matching Programs

### (Gestational Surrogacy Organizations):

As an intended parent, you may decide to go through a surrogacy Matching Program. This is also called a Gestational Surrogacy Organization. These organizations coordinate services between the gestational surrogate and intended parent(s) and offer services such as:

- Coordinating the screening of the gestational surrogate to qualified health care providers. This helps to ensure they are healthy enough to serve as a surrogate.
- Referring the surrogate and intended parent(s) to separate attorneys licensed in New York State. The attorneys help them with legal aspects of the surrogacy process.
- Ensuring that both parties' interests are protected.

**Important note:** Not all Gestational Surrogacy Organizations offer the same services. Some only match intended parents with gestational surrogates, while others provide a variety of services. As you consider working with a Gestational Surrogacy Organization, make sure you ask about all the services they offer.

**In New York State, Gestational Surrogacy Organizations must be licensed by the New York State Department of Health and follow all Department guidelines.** These guidelines contain specific legal protections for gestational surrogates that help ensure that the surrogacy agreement is ethical and fair to all parties involved.

Check to see if the organization you are considering is licensed by the Department of Health:

[health.ny.gov/community/pregnancy/surrogacy/licensed\\_programs.htm](https://health.ny.gov/community/pregnancy/surrogacy/licensed_programs.htm)

## Your Right to Representation and Legal Counsel

Both the gestational surrogate and intended parent(s) **MUST** be represented by separate legal counsel who:

- are licensed to practice law in New York State
- have expertise in surrogacy matters.

It is important that both parties have legal counsel before they enter into any agreements or contracts and before the surrogate is given any medication or undergoes any medical procedures for the surrogacy.

- Attorneys draft and review legal documents. They also ensure that their client(s) understand the rights and responsibilities listed in the surrogacy agreement.
- The surrogacy agreement describes the surrogate's rights and responsibilities as well as those of the intended parent(s). The agreement also describes the promises (agreement) the parties are making to one another. New York State law under the Family Court Act § 581-403, is very specific about the requirements of this agreement.
- The Gestational Surrogacy Organization and attorney for both parties must be certain that all requirements are met under New York State law. They need to ensure that the agreement is legally enforceable. It should also best protect the interests and rights of all parties to the agreement.
- The surrogacy agreement includes information on parental rights, medical decisions and billing, insurance, and other important matters involved in

the gestational surrogacy process. This is your opportunity to ask any questions about the terms of the agreement and to make certain you understand your rights and responsibilities under it.

**Surrogates:** If you are a gestational surrogate, you are provided protections under the Surrogate Bill of Rights. You should be aware of your rights and responsibilities. All potential surrogates and intended parents must be given a copy of the Surrogates' Bill of Rights before signing a contract and before a surrogate is given any medication or undergoes any medical procedure.

## Under the Surrogates' Bill of Rights, gestational surrogates have the right to:

- Make all health and welfare decisions about themselves and their pregnancy
- Their own, separate legal counsel of their choice, paid for by the intended parent(s)
- A comprehensive health insurance policy paid for by the intended parent(s). It should cover:
  - preconception care
  - prenatal care
  - major medical treatments
  - hospitalization
  - behavioral health care and
  - reimbursement for related medical costs, paid for by the intended parent(s)
- A life insurance policy (or acceptable equivalent), paid by the intended parent(s). It needs to take effect before a surrogate is given any medication or begins any medical treatment for embryo transfer.
- Protections if the agreement (contract) is terminated.

**To learn more about the Gestational Surrogates' Bill of Rights, visit:** [health.ny.gov/community/pregnancy/surrogacy/surrogate\\_bill\\_of\\_rights.htm](https://health.ny.gov/community/pregnancy/surrogacy/surrogate_bill_of_rights.htm)