

# Men Having Babies: A Framework for Ethical Surrogacy for Intended Parents

[Men Having Babies \(“MHB”\)](#) is an independent nonprofit organization dedicated to providing gay biological fathers and fathers-to-be with educational and financial support. We offer the following framework of ethical guidelines and best practices as part of our goal to promote surrogacy practices that minimize the risks and maximize the benefits to all involved. The framework was developed with the help of an advisory board made of surrogates and it comprises of three distinct levels / documents: a Statement of Principles, Baseline Protocols for Providers, and Recommended Best Practices for intended parents.

## Definitions<sup>i</sup>

**Intended Parent(s) (IPs):** One or two individuals who initiate the surrogacy journey with the intention to be the legal parent(s) of the future child/ren.

**Child:** One or more children born as a result of a surrogacy journey.

**Surrogate:** A woman gestating a child for another individual or couple, with the intent to give said child to the intended parents at birth.

**Egg Donor (Donor):** An individual who provides eggs (or oocytes) for another individual or entity through a non-coital method and without the intent, nor, to the fullest extent permitted by law, the legal obligation, to become a legal parent of any resulting offspring.

**Coordinating Agency (Agency):** An entity that locates, matches, and/or coordinates arrangements between IPs and donors and/or surrogates (including a Clinic that assumes some or all of these functions).

**Clinic:** A medical program that provides medical screening, advice, and / or treatments to IPs, surrogates, or donors as part of a Surrogacy Journey.

**Attorney:** An individual or firm providing legal services or counsel to any party in a surrogacy journey.

**Party:** A donor, surrogate, or IPs.

**Provider:** An agency, clinic, or attorney.

**Medical Treatments:** All medical procedures, administration of medications, monitoring, and related steps meant to facilitate the pregnancy and delivery of desired child.

**Surrogacy Journey (Journey):** A sequence of agreements, actions, services, and treatments with the aim of achieving a pregnancy with the help of a surrogate, for the benefit of IPs. A journey may include multiple attempted pregnancies, and is concluded with either the birth and subsequent finalization of the legal status of the desired child, or a decision by the IPs to cease future attempts.

**Finalization:** A judicial or administrative proceeding to establish parentage and / or legal residency of resulting child at the conclusion of a surrogacy journey.

---

<sup>i</sup> The definitions above were inspired in part by the AAARTA Code of Ethics

# I. Statement of Principles

The following set of principles express a vision and aspirations regarding the principles upon which a desired voluntary or regulatory surrogacy framework should be based. These principles stand behind the Baseline Protocols and Best Practices that are also part of the framework, and can serve as a general rules regarding issues that were not covered by them.

These principles have been endorsed by: **Our Family Coalition** (USA), **Meer dan Gewest** (the Dutch LGBT Family Association), the Italian organizations **Famiglie Arcobaleno** and **Associazione Radicale Certi Diritti**, and **the Israeli Gay Fathers' Association**. The position of the Belgian **I'ASBL Homoparentalités**, also closely aligns with the following principles.

1. *Surrogacy should be legally allowed as a parenting option to individuals, single or coupled, that lack the reproductive capacity to become parents without the help of a surrogate.*

\* This definition includes both “medical” infertility (as pertains to both cisgender women and transgender men who cannot carry a pregnancy for medical reasons) and “social” infertility (as pertains to both cisgender men and transgender women who lack a uterus), but not to women who simply do not desire to become pregnant.

2. *Women everywhere should have the right to decide when, how and under which circumstances they agree to help intended parents by donating eggs and / or carrying a baby for them.<sup>ii</sup>*

3. *Appropriate legislation should be advanced to allow prospective parents, donors and surrogates everywhere to enter into legally enforceable agreements for surrogacy arrangements without the need to cross state or international borders.*

\* Legal restrictions that force IPs to travel great distances for surrogacy make it harder for them to establish meaningful relationships with the surrogates and their families, and add needless cultural and financial obstacles to the process.

4. *Appropriate legislation should be enacted to protect the rights of all the parties in a surrogacy journey, and seamlessly terminate any parental rights and obligations of donors and surrogates.*

5. *Steps should be taken, including appropriate regulation, to limit the medical risks donors and surrogates are subjected to during the surrogacy process.*

\* Careful selection criteria and screening protocols are among the best ways to limit the risks associated with the treatments donors and surrogates undergo during the surrogacy process.

6. *Diligent measures, including appropriate regulation, should be taken to ensure all parties to a surrogacy journey make informed decisions and provide explicit consent regarding their participation. Special attention should be made to make sure candidates for egg donation and surrogacy are given access to independent medical and legal advice, and ongoing psychological and emotional support.*

\* We believe the ultimate test for a non-exploitive surrogacy arrangement is the quality of the interaction between the parties, and the overall sense of accomplishment and gratification surrogates have during and after the journey.

7. *Prospective parents should submit to appropriate criminal background checks, which will be made available to their prospective surrogate prior to matching, in order to make informed decisions about their safety.*
8. *The parties for a surrogacy journey should have the right to agree on a reasonable monetary compensation, possibly within regulatory guidelines, above direct expenses, to compensate the donor and surrogate for the risk, effort and inconvenience associated with their contribution, but it should not be tied in any way to specific outcomes.*

\* We believe that a compensation of this sort does not diminish the altruistic nature of their role. Conversely, we feel regulation that attempts to limit such compensation to expenses-only is demeaning and paternalistic, does not serve to protect the surrogates, and has often led to evasive behavior that is not conducive for positive experiences for all involved.

9. *Compensation guidelines for donors and surrogates may be legislated or encouraged in order to avoid unreasonably large sums that may lead to overwhelming financial incentives.*

\* While we do not think it is ethically necessary, we believe that it is reasonable for legislators or professionals to decide to enact or promote caps or guidelines for the compensation of surrogates and donors. It is reasonable to assume that such caps may reduce the likelihood that candidates will choose egg donation and surrogacy in the absence of sufficient altruistic motivation, and in circumstance that may lead to adverse long term medical or psychological outcomes. Therefore at the very least compensation guidelines should not be outlawed.

10. *Mediating agencies can play vital roles in helping match surrogate and donor candidates with prospective parents, as well as provide support and coordination services throughout the process. While they deserve compensation for their effort and expertise, excessive “finder’s fees” that take advantage of the scarcity of suitable candidates should be prevented through regulation. Ideally at least the service of finding surrogates and egg donors should be preformed by not-for-profit matching services.*

11. *Access to surrogacy should be made more affordable by removing unnecessary legal and administrative barriers (such as the need for second parent adoption by the non-biological partner), expanding medical insurance coverage to include treatments associated with ‘social infertility’, removing medically unwarranted costly procedures, and encouraging greater cost transparency by related service providers.*

12. *Additional medical and social science research is necessary to better understand the motivations, experiences and outcomes of surrogates and egg donors so as to guide best practices across all professional disciplines.*

---

<sup>ii</sup> Note: Our Family Coalition approved principle #2 as starting with “Prospective surrogates everywhere,” instead of “Women everywhere.”

## II. Baseline Protocols for Providers

The following is checklist of practices or protocols that MHB considers as the most critical standard for an ethical surrogacy journey. Providers that wish to be featured in our directory or participate at our conferences and the Gay Parenting Assistance Program will be required to offer surrogacy services adhering to these guidelines to all IPs, or at least as an option to those who so desire, and state so publicly on their website. In cases where clinics also perform matching and coordination tasks, they also should ensure all applicable coordination protocols are adhered to.

- **Informed consent:** The personal commitment and medical risks associated with egg donation and surrogacy, including possible complications and invasive procedures, should be fully explained by the clinic to all parties involved before any contracts are signed or medical procedures commence. Surrogates and donors should be informed about their right to receive such advice before, during and after the medical treatments from an independent medical professional that is not directly compensated by the IPs.
- **Medical screening:** Clinics should medically screen prospective donors and surrogates to ensure they are healthy and likely to complete the process with minimal risk to themselves or the child. The screening professional should be financially independent from the agency or any entity that receives a fee for finding medically suitable candidates, to avoid a conflict of interest.
- **Social and psychological screening:** Agencies should conduct screening and take steps to insure that surrogates and donors are aware of the potential stressors associated with the surrogacy journey, that they demonstrate sufficient social-emotional wellness to participate in the surrogacy journey, and have the required supportive environment. In particular, steps should be taken to ensure that the surrogacy journey will not adversely and irreparably affect the surrogate's close social relationships, and that her safety and long term well-being will not be jeopardized due to social stigma or disapproval.
- **Medical terms:** The agency should facilitate an agreement among the parties prior to contract signing regarding planned and contingent medical treatments. These should include the following: limitations to the number of embryos to be transferred, the number of transfer attempts, invasive diagnostic procedures (such as amniocentesis), selective reduction, termination, and the method of delivery.
- **Contracts:** Providers shall not commence with any medical treatments before contracts are signed between the parties that detail all obligations, restrictions, compensations and planned medical procedures. These contracts should remain accessible to all parties throughout the journey.
- **Legal representation:** Agencies and attorneys shall make sure that surrogates and donors have effective and independent legal representation in contract negotiations and finalization procedures. Exceptions may only be made in uncontested parentage proceedings in which no conflict of interest exists or is likely to arise among the parties, or where good faith efforts have been made to ensure such representation without success.

- **Financial mediators:** Agreed compensation, expense reimbursement and other financial arrangements affecting the surrogate and donor should be fully disclosed to them and paid to them or accounts owned by them, directly or through an escrow account. Should mediators or other individuals claim to represent the surrogate or donor financially, to the extent permitted by law, such arrangements or commissions have to be fully disclosed to and consented by all parties in advance, and payments to mediators should not exceed those terms at any point throughout the journey.
- **Language:** Agencies and clinics should make sure that medical risks and contracts are explained to the surrogate and donor in a language they fully understand, and that the contract they sign is available in the language of their choice. Support and coordination functions should also be offered in the donor's and surrogate's language, and arrangements made to facilitate direct communication between the surrogate and IPs in the mutually agreed form and scope.
- **Insurance:** The agency should make sure that the donor and surrogate have suitable medical insurance and life insurance in effect before medical treatments commence, and last until they have fully recuperated from the donation or delivery respectively. Applicable medical insurance should be in place for the surrogate even if IPs plan to pay for all pregnancy and labor charges privately, to cover her in cases of complications or other medical problems during the journey.
- **Accommodations:** In cases where a surrogate agrees or desires to relocate to the vicinity of the clinic for any length of time during the journey, steps should be taken to ensure that she has ongoing access to her family and other sources of support, and that she is able to leave the facility at will.
- **Meeting the child:** Regardless of the nature of the relationship between the parties, agencies need to ensure that at the very least, the surrogate has the right to see and hold the child she carried after the delivery.

### III. Best Practices

The following recommendations highlight the various steps intended parents can take to make their surrogacy journey in line with their ethical principles.

Going beyond the previously outlined Baseline Protocols, these Best Practices reflect the reality that much depends on the IPs. Nevertheless it is clear that people may have different views or emphasis regarding some of these practices, and that some may not be as applicable across various circumstances or cultures.

It should also be clarified that MHB is not a professional association. While some of the people who helped develop these recommendations are highly skilled professionals, we do not claim to provide professional medical, legal or psychological advice. We offer these best practices based on the experience of a large number of surrogacy parents, and suggest that IPs seek professional advice to supplement our input whenever they see fit.

Lastly, these best practices pertain primarily to the ethical considerations of surrogacy. MHB separately offers best practices for planning a surrogacy journey, budgeting, choosing providers, saving on costs, etc. Please refer to our website and conferences for more information.

- o **Long-term vision:** To make informed ethical and other choices along a surrogacy journey, IPs should think in advance about some basic personal preferences that may guide their decisions. These may include:
  - o **Family makeup:** How many children would you like? How many surrogacy journeys would you be willing / able to go through?
  - o **Paternity:** If a couple, is it equally important for both of you to be the biological dad?
  - o **Relationships:** How do you envision the relationship with the surrogate during and after the journey? How about the donor?
  - o **Birth story:** How would you like your future child to one day understand their story of origin?
  
- o **Autonomy and dignity:** Regardless of compensation paid to the donor and surrogate, keep in mind these individuals *want to help you have a child*. They are not service providers. Respect their autonomy and dignity, even if (and especially since) their choices and actions will greatly affect the success of the journey and health of your future child. Regardless of the exact mix of motivations behind each woman's decision to become a surrogate, we believe the ultimate test for a non-exploitive relationship is the overall sense of accomplishment and gratification surrogates have during and after the journey.
  
- o **Balancing the surrogate responsibilities with her autonomy:** While the surrogate will need to agree to certain restrictions and responsibilities that will likely be spelled out in your contract, they have to be reasonable – such as restrictions on smoking, alcohol consumption or sexual intercourse during a limited time period. Beyond that many IPs find that it is best to agree that the surrogate will maintain a healthy lifestyle suitable to pregnancy. Avoid conflict and infringing on her autonomy by trying to control decisions

such as use of certain cosmetics or travel. Adjusting expectations, curbing the need to control, and maintaining good communication are key, and a professional can help facilitate this and mediate when needed.

- o **Short and long-term relationship and communication:** The form, frequency and scope of your interaction with the surrogate during the journey and after the birth (including long-term) should be discussed in advance, and your respective visions on the topic should ideally be taken into account before you are matched. Be mindful of the surrogate's privacy and respectful of boundaries. Discuss issues such as your presence in medical checkups and the delivery, pumping breast milk, etc. Note that the dynamics of the relationship may change over time, and a skilled professional can be very helpful in guiding you in this process.
- o **Identity of the donor:** While some donor candidates prefer to stay anonymous, there is a growing tendency, and even some regulation, to prefer non-anonymous (or "known") egg donation arrangements. Known donations may have long-term medical and psychological benefits for the future child, but there are also legal and practical implications that may vary based on location and circumstances. Furthermore, some donors report that known arrangements make their donation more rewarding. We recommend that IPs become informed about these matters and consider consulting with the relevant professionals before they choose an egg donor.
- o **Personal matching:** Some programs, due to different cultural settings, do not match IPs and surrogates personally, and they may never meet. We consider this practice to be ethically undesirable. The parties should meet in person, or at least via video chat, before a match is finalized. Nevertheless, if the parties do not choose to meet in advance, we recommend that both parties be allowed to choose each other based on a written profile, or at least view those profiles.
- o **Screening of surrogates:** Beyond the baseline protocol for the surrogate's medical and psychological screening, it is recommended that the surrogate's significant other, if applicable, should also be evaluated for his or her support and readiness. We also recommend that much of the medical screening, including the review of the surrogate's medical records, take place ahead of a suggested match. Conducting these screening after the parties initiate a personal relationship might lead to unnecessary disappointment and distress, or to cases where IPs choose to proceed with a surrogate despite medical advice, and possibly subjecting both her and child to avoidable medical risk.
- o **Screening of IPs:** We suggest that IPs submit to a criminal background check, and some form of psychological screening to ensure that they would not endanger the surrogate's safety, and are fit for the surrogacy process.
- o **Mutual support:** The motivation of the surrogate depends on her original drive, but also on the support and appreciation she will receive throughout the journey – from you and her family. We suggest you visit the surrogate and her family, if that is acceptable to her, since all of them, especially her children, are affected by this journey. Also keep in mind that journey setbacks, traumatic as they may be on you, will affect her emotionally as well.

- o **Professional process and mental support:** In addition to the support and encouragement you can provide your surrogate, it is best that a professional resource (a social worker or a psychologist) also be made available to the surrogate throughout the journey, for both guidance and mental support. Many agencies will offer this as a standard service, but if needed, independent professional help can be attained as well.
- o **Peer support:** Many surrogates feel their best sources for support is the community of current and former surrogates. While most surrogates find each other on their own, we recommend that IPs ensure their surrogate has free and unsupervised access to such women, either through online forums (such as Surrogate Mothers Online) or face to face.
- o **Home environment:** While our Baseline Protocol does not prohibit arrangements when a surrogate agrees to relocate to the vicinity of the clinic during the journey (provided she is not confined to the temporary residence and has access to her family), it should be stated that such arrangements are not recommended. Surrogacy is a complex and challenging process under the best circumstances, and residing away from her home is likely to exacerbate these challenges and disrupt normal family life. Furthermore, moving into a different state or country, with a different legislative system, may make the surrogate more legally vulnerable.
- o **Jurisdictional contingencies:** In some surrogacy arrangements, while the surrogate is not expected to relocate for the duration of the journey, she is nevertheless asked to be in a particular jurisdiction for delivery (outside of her residence) due to critical legal, budgetary (insurance, in-network hospital) or medical outcomes. Often this is typical to surrogates who live and work close to state lines in the USA. We do not recommend depending on such arrangements, and certainly the surrogate should not be penalized if circumstances prevent her from delivering in the planned location.
- o **Compensation for inconvenience, effort and time, not outcome:** We believe that surrogates and donors have the right to reasonable compensation to account for the time, effort, and medical risk they undertake. However, we recommend that the compensation should not depend on any particular outcome. Stipulations can be made regarding prorating the surrogate's compensation based on the length of the pregnancy, and specific compensation associated with various invasive procedures, or the complexity of the surrogacy (e.g. in case of multiples). However compensation should be awarded for such efforts even when pregnancy did not occur, or in cases of miscarriage. While terminations for non-medical reasons are extremely rare, we realize these cases may challenge parents' full acceptance of the surrogate's autonomy over her body. While contractual consequences may apply regarding remaining compensation, we believe there should not be any further financial penalties to the surrogate if she chooses to abort, since those would diminish her autonomy.
- o **Full reimbursement of expenses:** Regardless of any compensation scheme for effort and time, we believe that surrogacy contracts should clearly stipulate that the IPs are always responsible to all journey-related medical expenses that are not covered by the surrogate's or donor's medical insurance. The same principle applies to non-medical expenses such as clothing, transportation, childcare, lost wages, and any other expense that are directly or indirectly related to their role in the surrogacy journey.

- o **Consideration regarding multiple embryo transfer:** Transferring more than one embryo is sometimes desired by IPs for reasons such as maximizing the likelihood of a pregnancy, the desire to have twins, or the desire to implant an embryo from each partner. However, it is important to acknowledge the significant health risks associated with multiple pregnancy for both the carrier and future babies. Beyond the health risks, it should be taken into consideration that a multiple embryo pregnancy tends to be more painful and disruptive to the surrogate and her family. We recommend that parents and surrogates seek professional medical advice regarding these risks before deciding on a multiple embryo transfer. In any regard it should be noted that the transfer of more than two embryos should almost always be avoided, barring specific medical conditions and explicit professional advice. In these rare cases, a contingency plan should be devised for embryo reduction in case of the high-risk pregnancy that may result.
- o **Concurrent (or dual) journeys:** Some IPs consider embarking on two surrogacy journeys in parallel or close proximity, whether in order to have more than one child while avoiding the risks of multiple embryos pregnancy, or in order to maximize the chances for at least one successful pregnancy. We advise that IPs and surrogates exercise caution, openly discuss and fully consider the potential emotional and practical complexities of such arrangements prior to the match. Establishing and managing a supportive relationship with one surrogate and her family is a considerable challenge already, and managing two such relationships in parallel could be significantly harder still. One or both of them may very well perceive it as disrespectful and impersonal.
- o **Fully independent counsel:** While our Baseline Protocols states that surrogates should have effective and independent legal representation, it should be noted that the definition of “independent” might not always be clear-cut. We recommend that the attorneys representing each party not have any formal financial affiliation or interest in each other, or in the coordinating agency, including partial ownership (by the attorneys and their immediate family). In addition, they should not offer or receive a referral fee from each other. However we suggest that the IPs and surrogates be aware that even in the absence of such formal ties, many agencies tend to suggest for the surrogate’s representation, other attorneys they trust and with whom they have developed an ongoing relationship. While the professional integrity of such attorneys may be solid, the surrogate should be made aware of the possible conflict of interest that may exist when their proposed attorney would like to receive additional referrals from the IPs’ agency. One possible solution would be to look at attorneys that work with other agencies.