

Clinical Directive: compliance is mandatory

Surrogacy in South Australian Public Health Services Clinical Directive

Policy developed by: SA Maternal & Neonatal Community of Practice
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Summary Clinical Directive for Management of Surrogacy in South Australian Public Health Services.

Keywords Non-autologous, autologous, cord blood, informed consent, malignant, stem cells, private, blood bank, antenatal, umbilical, labelling, storage, designated collector, surrogacy, Surrogacy in South Australian Public Health Services Clinical Directive

Policy history Is this a new policy? **Y**
Does this policy amend or update an existing policy? **N**
Does this policy replace an existing policy? **N**
If so, which policies?

Applies to All Health Networks
CALHN, SALHN, NALHN, CHSALHN, WCHN

Staff impact All Staff, Management, Admin, Students, Volunteers
All Clinical, Medical, Nursing, Allied Health, Emergency, Dental, Mental Health, Pathology

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1.0	18 August 2016	current	Original Version

Surrogacy in

South Australian
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SA Health

Note:

This policy provides advice of a general nature. This statewide policy has been prepared to promote and facilitate standardisation and consistency of practice, using a multidisciplinary approach. The policy is based on a review of published evidence and expert opinion.

Information in this statewide policy is current at the time of publication.

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Health practitioners in the South Australian public health sector are expected to review specific details of each patient and professionally assess the applicability of the relevant guideline to that clinical situation.

If for good clinical reasons, a decision is made to depart from the policy, the responsible clinician must document in the patient's medical record, the decision made, by whom, and detailed reasons for the departure from the policy.

This statewide policy does not address all the elements of clinical practice and assumes that the individual clinicians are responsible for discussing care with patients in an environment that is culturally appropriate and which enables respectful confidential discussion. This includes:

- the use of interpreter services where necessary,
- advising patients of their choice and ensuring informed consent is obtained,
- providing care within scope of practice, meeting all legislative requirements and maintaining standards of professional conduct, and
- documenting all care in accordance with mandatory and local requirements.

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GLOSSARY OF TERMS

Altruistic surrogacy	Means a practice whereby a woman agrees, for no financial gain, to become pregnant and bear a child for another person or persons to whom she intends to transfer the child's care at, or shortly after, the child's birth.
Commissioning parents	The two (2) persons to whom the custody of any child to whom the surrogacy agreement relates to, or is to be surrendered.
Family's Relationship Act 1975	South Australian Legislation that provides an understanding of the range of relationships between parent(s) and child ¹
Mother or surrogate mother	In respect of a recognised surrogacy agreement, means the woman who will, or will seek to, become pregnant for the purposes of the agreement (part 2b Family Relationships Act 1975). Note under the Family Relationship Act a woman who gives birth to a child is, for the purposes of the law of the state, the mother of the child (whether the child is conceived by the fertilisation of an ovum taken from that woman or another woman) ¹
Parentage Order	Orders as to the parents of a child born under recognised surrogacy arrangements; for the purposes of this policy will be known as "Parentage Order". These can only be made where the child was born under a 'recognised' surrogacy agreement and the commissioning parents are domiciled in South Australia. Once this order is made, the commissioning parents are considered to be the parents of the child.
SA Health	Is not the name of a Government Department or a legal entity. It is the "badge" adopted across the South Australian public health services portfolio to collectively refer to the Department for Health and Ageing (an administrative unit established under the <i>Administrative Arrangements Act 1994</i> and all "Hospitals" incorporated under the <i>Health Care Act 2008</i>) ¹
SA Health employees	Includes any person employed within the Department for Health and Ageing
Surrogacy	A contract under which one person agrees to become pregnant or to seek to become pregnant and to surrender custody of, or rights in relation to, the resulting child. s10HA(2) of the Family Relationships Act 1975 ¹
Surrogate	One woman (host mother or surrogate mother) carries a child for another as the result of an agreement which is made before conception, to surrender custody of, and rights in relation to, a child born as a result of the pregnancy to 2 other persons
Consent Medical Treatment and Palliative Care Act 1995	South Australian Legislation that regulates medical practice in regard to consent to medical treatment; administration of medical treatment to a child and administration of emergency medical treatment ²
'In loco parentis'	Legal term describing a relationship similar to that of a parent to a child. It refers to an individual who assumes parental status and responsibility for a child as per the Consent Act ²

INTRODUCTION

SA Health has developed the “*Standards for the Management Surrogacy in SA Public Health Services*” to guide registered practitioners (that is, registered nurses, aboriginal health workers, midwives and/or medical practitioners) working in the South Australian public health system when supporting the women undertaking a surrogacy agreement.

SA Health is not a party to a surrogacy agreement but remains obligated to provide appropriate perinatal care to both the surrogate woman and her child in accordance with informed consent determined by the legal decision maker as defined in the Consent Medical Treatment and Palliative Care Act 1995².

Surrogacy provides a unique opportunity for a couple to parent a child that has some genetic link to one or both parents.

Surrogacy is currently a relatively slow emerging perinatal practice, the commitment to and motivation for surrogacy has unique demands that impact on perinatal service provision.

Whilst each surrogacy pregnancy must be managed in its uniqueness and it is recognised that there are legal components structured within a *State Framework for Altruistic Surrogacy*, there is currently no standard form/proforma directing the clinical management for the *State Framework for Altruistic Surrogacy Agreements (surrogacy agreement)*³.

Surrogacy in South Australia is legislated as per Family Relationships Act 1975 Part 2B and No 64 of 2009 Statutes Amendment (Surrogacy) Act 2009³, in conjunction with the Consent Medical Treatment and Palliative Care Act 1995²

Compliant with patient confidentiality obligations, SA Health employees should secure consent from the surrogate mother to involve the commissioning parents in the care of the surrogate mother and the child born as a result of a surrogacy agreement. Such involvement will be subject to the wishes of the surrogate mother, and may include clinical restrictions imposed by the hospital in the best interests of the surrogate mother and the child born as a result of a surrogacy agreement.

It is important to note that until a parentage order is made transferring parental responsibility to the commissioning parents, the birth parents (surrogate mother and/or her partner) are regarded as the legal parents of a child born as a result of a surrogacy arrangement.

The *Standards for the Management Surrogacy in SA Public Health Services* should be utilised in conjunction with:

- Consent to Medical Treatment and Palliative Care Act 1995²,
- Family Relationships Act 1975 Part 2B³,
- No 64 of 2009 Statutes Amendment (Surrogacy) Act 2009³
- SA Health policies, standards and perinatal practice guidelines⁵
www.sahealth.gov.au/perinatal

Given the implications on clinical practice associated with managing the parties involved in a surrogacy agreement, perinatal clinicians must ensure they undertake the appropriate educational preparation to ensure they comply with the *Standards for the Management Surrogacy in SA Public Health Services*. Health Unit Managers in South Australia’s public maternity, neonatal and clinical risk management units must provide the relevant staff with suitable education programs related to managing surrogacy agreements.

Contemporary perinatal care may be challenged by the fundamental concept of the surrogacy agreement whereby a baby will be relinquished to a person(s) other than the birth parent(s). The agreement also imposes a new perspective: the need for the perinatal clinicians to include appropriate consideration for the commissioning parents within current legislative requirements.

ADDITIONAL LEGAL ADVICE

SA Health employees are encouraged to seek additional legal advice from the SAHealth, Legal, Governance and Insurances Services regarding surrogacy agreements and any subsequent disputes that may arise in the care of the surrogate mother and/or the child born as a result of a surrogacy arrangement. These services can be secured through each Local Health Network's (LHN) Clinical Risk Manager during office hours and if 'out of hours', the 'on call' LHN Executive should be contacted for advice; Country Health SA employees should contact their Unit Manager in the first instance and LHN Nurse Executive if additional assistance is required.

AIM

These standards aim to provide the surrogate mother, the commissioning parents and SAHealth employees with information and clinical practices/procedures related to:

- > acknowledging the surrogacy agreement,
- > optimising the birth outcome(s) for the surrogate mother and the child born as a result of the pregnancy,
- > providing an appropriate duty for the care of the surrogate mother and the child born as a result of the pregnancy.

BACKGROUND

Scientific developments have had a major influence on assisted reproductive technology and the subsequent assisted conception procedures have also enabled a child to be conceived through a surrogacy arrangement.

Legislative changes that occurred in South Australia in 2009 have sanctioned an infertile couple entering contract/agreement with a woman to conceive and 'carry' a fetus for the sole purpose of surrendering the child to them after birth.

Whilst the routine perinatal care / treatments and professional obligations apply to the management of surrogate mother and the child born as a result of the pregnancy, it is recognised that a surrogate pregnancy is a complex one that encompasses legal, social/ethical and psychological dimensions that require unique sensitivities that will reflect into clinical practice.

Perinatal clinicians recognise the significant amount of counselling the surrogate mother and the commissioning parents have undertaken in pursuit of the surrogate pregnancy, and would acknowledge the challenges and significant costs that have been endured by all parties in establishing a legal surrogacy agreement. All perinatal care/services will be provided with the utmost respect for all parties involved.

Managing the consent for treatment remains a legal obligation within clinical practice and in the situation of a surrogacy agreement; care must be obliged in accordance with SA legislation. Notably, SA legislation states:

" a question relating to any medical treatment to be provided to a surrogate mother or an unborn child to which a recognised surrogacy agreement relates (including, to avoid doubt, a question relating to who can consent to such treatment, whether or not it relates to the pregnancy) is to be determined as if the recognised surrogacy agreement did not exist" ¹.

The surrogate mother retains the right to consent to the medical treatment of herself, the fetus during pregnancy, and along with her partner, the treatment and management of the child born as a result of a surrogacy arrangement.

STANDARD REQUIREMENTS

These standards should be used in conjunction with the Standards for Maternity and Neonatal Services in SA 2015⁶ and the South Australian Perinatal Practice Guidelines⁷.

As a publicly funded patient of SA Health services, the surrogate mother is supported in all aspects of her perinatal care. The commissioning parents, can at the request of the surrogate mother, remain in the health unit to support the surrogate mother during the perinatal period but are not included in the surrogate mother's ' publicly funded episode of care and subsequently should be:

- made aware of the restrictions that may be imposed upon them as a result of the request/wishes of the surrogate mother,
- made aware that some health units have local restrictions on the number of support persons permitted in their birth unit and/or operating rooms,
- made aware that they will not to be 'admitted' as 'inpatients' of the public health service but instead should be managed as per the health unit's boarder policy and where possible, and only at the request of the surrogate mother, be able to remain in the health unit to support the surrogate mother, and
- be directed to discuss their health needs with their local medical practitioner and be made aware that they may need to source private providers to access such services as lactation consultancy, allied health services and mental health support.

Additional legal advice can be sourced as per "ADDITIONAL LEGAL ADVICE" section in this document.

Antenatal Care

- > As with any perinatal care, SA Health employees should recognise the surrogate mother has the right for self-determination.
- > SA Health employees should make a documentation of the surrogacy pregnancy in the surrogate mother's SA hand held pregnancy record⁵ as early in pregnancy as possible. Then:
 - ensure the surrogate mother and, if possible the commissioning parents are provided with a copy of the patient information brochure "*The Management of Surrogacy in South Australian Public Health Services*" and the *Standards for the Management of Surrogacy in South Australian Public Health Services*,
 - provide the surrogacy agreement adhesive sticker to the surrogate mother for placement in her hand held pregnancy record⁵ –*suggest placement at the bottom of page 6.*

I am pleased to be part of a SURROGACY AGREEMENT with

Commissioning parent Name:.....

Commissioning parent Name:.....

Commissioning parent's ADDRESS:

Commissioning parent's contact phone N°:

(this sticker should be placed on the bottom of page 6 of the SA Pregnancy Record)

Intrapartum Care

- > SA Health employees should support the surrogate mother's intrapartum care in accordance with current state legislation; that states the surrogate mother retains the right to consent to medical treatment of herself, the fetus during the pregnancy and in conjunction with her partner, the child born as a result of a surrogacy agreement.
- > SA Health employees should involve the commissioning parents in the surrogate mother's intrapartum care as consented by the surrogate mother.

Postnatal Care

- > SA Health employees should involve the commissioning parents in the surrogate mother's postpartum care as consented by the surrogate mother or her partner
- > SA Health employees should ensure the medical record of the surrogate mother and that of the child born as a result of a surrogacy agreement remain linked and the child has the same surname as the surrogate mother for the duration of the admission. This does not apply when the commissioning parents provide "*Orders as to the parents of child born under recognised surrogacy arrangements*" ie *parentage order*.
- > SA Health employees should encourage the surrogate mother to complete the Medical Record form "*Notification of Newborn's Name*" - MR 148. Attachment 2, prior to discharge. The information included in this form will identify the name the child born from the surrogacy pregnancy will be known as once under the care of the commissioning parents. This form should be included the child's Medical Record. This may help locate and align the Medical Record and the child born from the surrogacy pregnancy at future attendances at the health unit.
- > SA Health employees should ensure the surrogate mother receives the "Parent Pack", containing a "Newborn Child Declaration". The SA Health Registered Midwife or Medical Practitioner should complete the "Proof of Birth declaration" and instruct surrogate mother that she must register the birth of the child born from the surrogacy pregnancy.
 - the surrogate mother and/or the commissioning parents requiring information regarding government support payments should be directed to the Australian Government website:
<http://www.humanservices.gov.au/customer/subjects/when-your-baby-is-born>

Neonatal Care

- > SA Health employees should ensure neonatal care of the child born from the surrogacy pregnancy should be undertaken as per the Consent for Medical treatment Act, ie the surrogate mother/parents provide legal consent for any treatment provided to the neonate
- > SA Health employees should ensure the child born from the surrogacy pregnancy is discharged from the public health service's care into the care of the surrogate mother.
- > SA Health employees should be aware that the commissioning parents who present with the child born from the surrogacy pregnancy when seeking medical treatment, in the absence of a dispute, may consent to the treatment for the child. The commissioning parents in this instance are acting '*in loco parentis*' in relation to the child². This situation may also arise when the child born from the surrogacy pregnancy remains as an inpatient after the discharge of the surrogate mother.
- > It is acknowledged the commissioning parents will apply to the Youth Court of South Australia for a "Order as to the parents of child born under recognised surrogacy arrangements", so that they can be recognised as the parents of the child³. (This application for a Parentage Order must be made within 4 weeks - 6 months of the child's birth.)

Additional legal advice can be sourced as per "ADDITIONAL LEGAL ADVICE" section in this document.

REFERENCES

1. Family Relationships Act 1975(SA); <http://www.courts.sa.gov.au/courts/coroner/index.htm>
2. Consent to Medical Treatment and Palliative Care Act 1995; www.legislation.sa.gov.au
3. No 64 of 2009 Statutes Amendment (Surrogacy) Act 2009; www.sa.gov.au/courts/coroner/index.htm
4. www.ranzcog.edu.au/publication/womens-health-publications/patient-information-pamphlets.html
5. www.sahealth.sa.gov.au/pregnancyrecord
6. Standards for Maternal and Neonatal Services in SA 2015; www.sahealth.sa.gov.au
7. www.sahealth.gov.au/perinatal
8. SA Department for Health and Ageing Medical Records Documentation and Data Capture Standards August 2000; catalogue.nla.gov.au/Record/754883

Version Control and change history

PDS reference: OCE use only

Version	Date from	Date to	Amendment
1.0	August 2016	Current	Original version

<p>NOTIFICATION OF NEWBORN'S NAME</p> <p>(MR-XXX)</p> <p>Hospital: _____</p>	<p style="font-size: small; text-align: center;">Affix patient identification label in this box</p> <p>UR No: _____</p> <p>Surname: _____</p> <p>Given Name: _____</p> <p>Second Given Name: _____</p> <p>D.O.B: _____ Sex: _____</p>
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Dear Parent,
We are required to update our records with your child's name so that if he/she ever returns for care at this Hospital, we can easily locate all medical information relating to your child.

Current registered identification details of you:

Mother's Surname: _____

"Baby of" Mother's first name: _____

Please complete the section:
 The name I/we have chosen _____, Deaths & Marriages.

Registration is: _____
Fr _____ Given Name(s) _____

Parent 1 Surname: _____ First name: _____
Print Name Block Caps

Signature: _____ Date: _____

Parent 2 Surname: _____ First name: _____
Print Name Block Caps

Signature: _____ Date: _____

Please return this completed form to the reception desk on the ward before you leave.

OFFICE USE ONLY
Transfer in/out on ____/____/____ to _____ Hospital
All staff note – send copy of this form to hospital with baby transfer.
Completed on PAS by _____ Admin Officer on ____/____/____

NOTIFICATION OF NEWBORN'S NAME
MR-XXX

SA Health
Created
Nov
2016

Top copy to "Baby's" Medical Record Back Copy to "Baby's" Mother's Medical Record