

Gestational Surrogacy

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Gestational Surrogacy

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1. Core Definition

Gestational surrogacy is an advanced reproductive technology wherein a woman, known as the **gestational carrier** or **surrogate**, carries a pregnancy to term for another individual or couple, who are referred to as the **intended parents**. Crucially, in gestational surrogacy, the surrogate is not the biological mother of the child she carries. The pregnancy is achieved through in vitro fertilization (IVF), where embryos are created using the gametes (sperm and eggs) of the intended parents, or donor gametes, and then transferred into the surrogate's uterus. This distinguishes gestational surrogacy from traditional surrogacy, where the surrogate is also the biological mother, typically having been artificially inseminated with the intended father's sperm.

The procedure bypasses the need for the intended mother to carry the pregnancy herself, making it a viable option for individuals or couples facing various reproductive challenges. These challenges include, but are not limited to, uterine infertility (e.g., absence of a uterus, uterine malformations, or previous hysterectomy), medical conditions that make pregnancy dangerous for the intended mother, recurrent pregnancy loss, or failure of multiple IVF cycles. Additionally, gestational surrogacy is a primary pathway to parenthood for male same-sex couples and single fathers, who require a gestational carrier to achieve biological parenthood.

The core tenet of gestational surrogacy lies in the separation of genetic lineage from the act of gestation. The child born through gestational surrogacy has no genetic link to the surrogate, inheriting genetic material solely from the egg and sperm donors. This genetic detachment is often perceived as simplifying legal and emotional aspects compared to traditional surrogacy, though complex legal and ethical considerations surrounding parental rights, consent, and the welfare of all parties involved remain paramount.

2. Etymology and Historical Development

The concept of surrogacy, broadly defined as one woman carrying a child for another, has historical roots that predate modern medical technologies, often appearing in religious texts and ancient legal systems, albeit usually in the context of traditional surrogacy or wet nursing. However, **gestational surrogacy** as a distinct medical and legal practice is a relatively recent development, emerging alongside advancements in assisted reproductive technologies (ART), particularly in vitro fertilization (IVF). The term "in vitro," Latin for "in glass," refers to the fertilization process occurring outside the human body in a laboratory setting.

The first successful human IVF birth occurred in 1978 in the UK, marking a pivotal moment in reproductive medicine. This breakthrough laid the groundwork for embryo transfer, which is fundamental to gestational surrogacy. The first successful gestational surrogacy pregnancy and birth took place in the United States in 1985. In this landmark case, an embryo created from the eggs and sperm of an infertile couple was transferred to a gestational carrier, resulting in the birth of a healthy baby. This event dramatically expanded the possibilities for overcoming infertility and offered a new avenue for family building.

Since the mid-1980s, the practice of gestational surrogacy has evolved significantly, driven by ongoing refinements in IVF techniques, improved embryo cryopreservation methods, and increasing societal acceptance of diverse family structures. Legal frameworks have gradually developed in various jurisdictions to address the unique complexities of these arrangements, though considerable international variation persists. The increasing demand for surrogacy, fueled by rising infertility rates, delayed childbearing, and the expansion of LGBTQ+ rights, has further propelled its development and global prevalence.

3. Key Characteristics

Genetic Unrelatedness of Surrogate: The defining characteristic of gestational surrogacy is that the gestational carrier has no genetic connection to the child she carries. The embryo transferred into her uterus is created from the gametes of the intended parents or donor gametes, ensuring that the surrogate is not the biological mother.

Reliance on In Vitro Fertilization (IVF): Gestational surrogacy is entirely dependent on IVF technology. This involves stimulating the egg donor's ovaries, retrieving eggs, fertilizing them with sperm in a laboratory, culturing the resulting embryos, and then transferring one or more viable embryos into the gestational carrier's uterus.

Medical Supervision and Screening: The entire process is conducted under strict medical supervision. Both the intended parents and the gestational carrier undergo extensive medical and psychological screening to ensure their suitability and preparedness for the process, addressing potential health risks and emotional challenges.

Contractual Agreements: A comprehensive legal contract is central to gestational surrogacy. This agreement outlines the rights and responsibilities of all parties, including financial arrangements (if commercial), medical protocols, contact during and after pregnancy, and, crucially, establishes the intended parents as the legal parents of the child from birth.

Intent-Based Parenthood: Legal parenthood in gestational surrogacy is typically established based on the intent of the parties involved, rather than biological connection or the act of gestation. Pre-birth orders or post-birth adoptions are common legal mechanisms used to ensure the

intended parents are recognized as the legal parents from the moment of birth.

4. Process and Medical Procedures

The process of gestational surrogacy is a meticulously planned and executed medical journey, beginning well before embryo transfer. It typically involves several key stages, each requiring significant medical oversight and coordination. The initial phase involves the selection and screening of both the intended parents and the gestational carrier. Intended parents undergo fertility evaluations to determine the cause of infertility and their suitability for IVF. Gestational carriers undergo comprehensive medical examinations to assess their uterine health, general physical condition, and ability to safely carry a pregnancy to term. Psychological evaluations are also crucial for all parties to ensure they understand the emotional complexities and potential challenges of the surrogacy journey.

Following screening, the IVF cycle commences. If the intended parents are using their own gametes, the intended mother (or egg donor) undergoes ovarian stimulation with fertility medications to produce multiple eggs. These eggs are then surgically retrieved through a minimally invasive procedure. Simultaneously, sperm from the intended father (or sperm donor) is collected. In the embryology laboratory, the retrieved eggs are fertilized with sperm through conventional IVF or intracytoplasmic sperm injection (ICSI). The resulting embryos are then cultured for several days, typically to the blastocyst stage, allowing for evaluation of their viability and genetic testing if desired (e.g., preimplantation genetic testing, PGT).

Concurrently, the gestational carrier undergoes preparation of her uterus. This usually involves hormone therapy, primarily estrogen and progesterone, to synchronize her uterine lining to optimally receive and support an embryo. Once the uterine lining is adequately prepared and the embryos are ready, one or more embryos are carefully transferred into the gestational carrier's uterus using a thin catheter, a procedure similar to a routine gynecological exam. After the embryo transfer, the gestational carrier continues hormone support for several weeks. A pregnancy test is performed approximately two weeks later, and if positive, the pregnancy is monitored by the reproductive endocrinologist until around 10-12 weeks gestation, after which care typically transitions to an obstetrician for the remainder of the pregnancy.

5. Legal and Ethical Considerations

The legality and ethical landscape of gestational surrogacy are highly complex and vary significantly across different jurisdictions, both within and between countries. One of the primary legal distinctions is between **altruistic surrogacy**, where the surrogate receives no financial compensation beyond reimbursement for medical expenses and lost wages, and **commercial surrogacy**, where the surrogate is paid a fee for her services. Many countries and states permit

altruistic surrogacy but prohibit commercial arrangements, often citing concerns about the commodification of women's bodies and children.

Establishing legal parentage is another critical aspect. In many jurisdictions, pre-birth orders can be obtained, which legally designate the intended parents as the child's parents from birth, preventing the need for adoption or potential disputes with the gestational carrier. However, in regions without such provisions, intended parents may need to undergo post-birth adoption proceedings, which can be protracted and emotionally taxing. Laws also differ concerning who can access surrogacy, with some jurisdictions restricting it to heterosexual married couples, while others are more inclusive, extending access to single individuals and same-sex couples. The evolving nature of these laws reflects ongoing societal debates about family structure, reproductive rights, and the rights of all parties involved in a surrogacy arrangement.

Ethically, gestational surrogacy raises profound questions. Concerns about potential exploitation of gestational carriers, particularly those from economically disadvantaged backgrounds, are frequently voiced. Critics argue that commercial surrogacy can lead to the commodification of women's reproductive capacities and even children, challenging fundamental ethical principles. There are also discussions about the psychological well-being of the surrogate, the intended parents, and the child born through surrogacy, particularly regarding the disclosure of the child's origins. While proponents emphasize the autonomy of individuals to make reproductive choices and the profound joy surrogacy brings to otherwise childless families, these ethical dilemmas necessitate robust legal frameworks, comprehensive counseling, and stringent safeguards to protect the welfare of all involved, ensuring that surrogacy remains an ethical and empowering option for family building.

6. Significance and Impact

Gestational surrogacy has profoundly impacted modern family building, offering a crucial pathway to parenthood for a diverse range of individuals and couples who previously faced insurmountable barriers. For those struggling with infertility due to uterine factors (e.g., absence of a uterus, uterine scarring, or medical conditions contraindicating pregnancy), or for women whose health would be severely jeopardized by carrying a pregnancy, gestational surrogacy provides the only means to have a genetically related child. This medical innovation has transformed despair into hope for countless intended parents, allowing them to fulfill their deeply held desire for biological offspring.

Beyond heterosexual couples facing medical infertility, gestational surrogacy has been particularly transformative for male same-sex couples and single fathers. Prior to its widespread availability, their options for creating families with a genetic link were severely limited. Now, with the use of donor eggs and a gestational carrier, these individuals can experience biological parenthood, contributing to the broader recognition and normalization of diverse family structures in society.

This expansion of family formation possibilities challenges traditional notions of parenthood and familial bonds, highlighting the growing acceptance of intentionality and genetic connection as cornerstones of modern family units.

The impact of gestational surrogacy extends beyond individual families, influencing public discourse on reproductive rights, gender equality, and global health disparities. It has driven legal reforms worldwide, prompting governments to consider complex questions about citizenship for children born via international surrogacy, the rights of surrogates, and the regulation of reproductive tourism. While offering immense benefits, its existence also forces societies to confront the ethical limits of technological intervention in reproduction and the moral obligations owed to all parties involved, including the children born through these arrangements, thereby shaping the ongoing evolution of bioethical thought and reproductive jurisprudence.

7. Debates and Criticisms

Despite its transformative potential, gestational surrogacy is a subject of significant ethical, legal, and social debate. A central criticism revolves around the potential for the **exploitation of gestational carriers**, particularly in commercial arrangements and in transnational contexts. Opponents argue that financial compensation can coerce vulnerable women, especially those from lower socioeconomic backgrounds, into undertaking significant health risks and emotional burdens for the benefit of wealthier intended parents. This concern is heightened by perceived power imbalances and the potential for a "race to the bottom" where surrogates in less regulated countries may receive inadequate compensation or medical care.

Another major debate centers on the **commodification of human life and reproduction**. Critics contend that paying for a woman's reproductive labor, or for the creation of a child, reduces individuals to commodities and devalues the intrinsic worth of human beings and the sanctity of the family unit. This perspective often aligns with religious or conservative viewpoints that view reproduction as a natural process that should not be subject to market forces. Conversely, proponents argue that surrogacy is a legitimate form of labor and that prohibiting it infringes upon a woman's bodily autonomy and reproductive freedom, as well as the reproductive rights of intended parents.

Concerns also extend to the **psychological and social impacts** on all parties involved. While many surrogacy journeys are positive, potential emotional complexities for the gestational carrier, who must bond with and then relinquish a child, are often highlighted. There are also questions about the potential impact on the child, particularly regarding their understanding of their origins and relationship with their gestational carrier. While research suggests that children born via surrogacy generally thrive, these debates underscore the need for comprehensive psychological support, transparent communication, and robust legal frameworks to ensure the well-being of all

individuals engaged in gestational surrogacy arrangements.

Further Reading

[Gestational Surrogacy - Wikipedia](#)

[American Society for Reproductive Medicine \(ASRM\) - Practice Guidelines for Gestational Carrier Cycles](#)

[Ethical Considerations of Gestational Surrogacy - Fertility and Sterility](#)

[In Vitro Fertilization \(IVF\) - Britannica](#)

[The Ethics of Surrogacy: A Review of the Literature - NCBI \(PMC\)](#)

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