

Surrogacy Management Standards in Public Health Units in SA 2021

Clinical Directive

Version No.: 2
Approval date.: 4/2/21



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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1. Policy Statement

These *Surrogacy Management Standards in Public Health Units SA 2021* aim to provide the surrogate mother, the intended parents and SA Health 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.

2. Roles and Responsibility

SA Health has developed the *Surrogacy Management Standards in Public Health Units SA 2021* clinical directive (*Surrogacy CD*) 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, across the perinatal period.

The *Surrogacy CD*, has been developed by the South Australia Maternal, Neonatal and Gynaecology Community of Practice Executive Committee in conjunction with lead clinicians and key stakeholders from across South Australia, with the aim of supporting best clinical practice in the management of the surrogate mother and intended parents.

Chief Executive Officer

The Local Health Network (LHN) Chief Executive Officer has ultimate responsibility for the effective implementation of this clinical directive and must ensure:

- > all levels of management are aware of their responsibilities in relation to this Clinical Directive
- > all employees are aware of their responsibilities in relation to this Clinical Directive
- > adequate resources are made available to implement and sustain this Clinical Directive

Directors, Managers and Supervisors

Directors, managers and supervisors have direct responsibilities for implementing the Clinical Directive including:

- > providing resources and staff support,
- > ensuring that all relevant health practitioners have access to the required education,
- > monitoring compliance.

Staff

Staff are responsible for:

- > complying with the Clinical Directive,
- > managing their own perinatal education/training, ensuring they remain competent for their scope of practice and level of responsibility.

Privately Practising General Practitioners and Midwives Providing Services In Public Health Units

Privately practising practitioners providing services in public health units are responsible for:

- > complying with the Clinical Directive,
- > managing their own perinatal education/training, ensuring they remain competent for their scope of practice and level of responsibility.

3. Policy Requirements

3.1 Introduction

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

The management of surrogacy is relatively slowly emerging perinatal practice. The commitment to and motivation for surrogacy has unique demands that impact on the provision of perinatal services.

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 intended parents within current legislative requirements.

Surrogacy in South Australia is legislated as per *Surrogacy Act 2019*¹ in conjunction with the *Consent Medical Treatment and Palliative Care Act 1995*². This *Act* replaces the *Family Relationships Act 1975*³.

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 1995*².

Compliant with patient confidentiality obligations, SA Health employees should secure consent from the surrogate mother to involve the intended 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 order¹ is made transferring parental responsibility to the intended parents, the birth parents (surrogate mother /and her partner) are regarded as the legal parents of a child born as a result of a surrogacy arrangement.

The *Surrogacy CD* should be utilised in conjunction with:

- > *Consent to Medical Treatment and Palliative Care Act 1995*²,
- > *Surrogacy Act 2019*¹
- > SA Health policies, standards and perinatal practice guidelines⁴
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 *Surrogacy CD*. Health Unit Managers in South Australia's public maternity, neonatal and clinical risk management units must provide the relevant staff within the multidisciplinary perinatal team with suitable education related to a managing surrogacy agreement inclusive of the agreed birth plan.

3.2 Background

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

In 2009 South Australia initial legislative changes sanctioned an infertile couple entering into a contract/agreement with a woman to conceive and 'carry' a fetus for the sole purpose of surrendering the child to them after birth. Further to this, in 2019 state legislation – *Surrogacy Act 2019*¹ provides a scheme allowing for certain forms of surrogacy in South Australia.

Whilst the routine perinatal care / treatments and professional obligations apply to the management of the 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 intended 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 to an unborn child to which a lawful surrogacy agreement relates, is to be determined as if the lawful surrogacy did not exist ¹.

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

3.3 Standard requirements

These standards should be used in conjunction with the Standards for Maternity and Neonatal Services in SA 2021 Clinical Directive⁵ and the South Australian Perinatal Practice Guidelines⁴.

As a publicly funded patient of SA Health services, the surrogate mother is supported in all aspects of her perinatal care, including referral to domiciliary midwifery services, and any community services deemed to be appropriate to support her health and wellbeing.

The intended 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 will 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,
- > counselled on the restrictions in accessing public funded social work services. Hospital Social Worker services are limited to acute crisis situations as brief intervention workers, and
- > 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.

The intended parents should be supported in the postnatal period with referral to SA Health funded domiciliary midwifery services and Child and Family Services (CaFHS).

4. Implementation and Monitoring

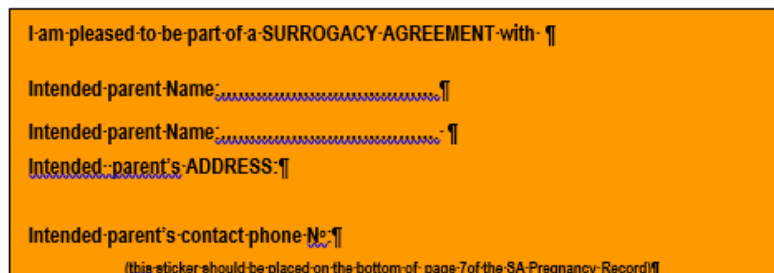
4.1 Antenatal Care

- > As with any perinatal care, SA Health employees should recognise the surrogate mother has the right for self-determination.

*"A surrogate mother has the same rights to manage her pregnancy and birth as any other pregnant woman."*¹

- > Perinatal care providers should note many surrogacy pregnancies eventuate from donated sperm which by their very nature, have been associated with additional risks, particularly that of pre-eclampsia and fetal growth impairment⁶. The management plan for any women who has conceived with a donor egg (which is not genetically her own) should include the recommendation of:
 - the prophylactic administration of low dose Aspirin from the first heartbeat observed on ultrasound (usually 6 to 7 weeks),
 - the prophylactic administration of oral Calcium,
 - conscientious maternal and fetal surveillance, with an additional growth and fetal well-being ultrasound assessment in the second and third trimesters of pregnancy.

- > SA Health employees should make a documentation of the surrogacy pregnancy in the surrogate mother's SA Pregnancy Record⁷ as early in pregnancy as possible and update the record with any new / revised information. Then:
 - ensure the surrogate mother and, also the intended parents are provided with a copy of the *Surrogacy Management Standards in Public Health Units SA 2021* clinical directive and the *Surrogacy Management Standards in Public Health Units SA 2021* clinical directive patient information brochure.
 - provide the surrogacy agreement adhesive sticker to the surrogate mother for placement in her pregnancy record⁷ – *suggest placement at the bottom of page 7*



4.2 Intrapartum Care

- > SA Health employees must 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 and the fetus during the pregnancy, and in conjunction with her partner, the child born as a result of a surrogacy agreement. SA legislation states:

“a question relating to any medical treatment to be provided to a surrogate mother, or to an unborn child to which a lawful surrogacy agreement relates, is to be determined as if the lawful surrogacy did not exist.”¹
- > SA Health employees should involve the intended parents in the surrogate mother's intrapartum care as consented by the surrogate mother.

4.3 Postnatal Care









- > SA Health employees should involve the intended 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 intended parents provide “*Orders as to the parents of child born under recognised surrogacy arrangements*”¹ 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 intended 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 offer the intended parents a referral to CaFHS who can support the care of their newborn.
- > SA Health employees must ensure the surrogate mother receives the “Parent Pack”, containing an Australian Government Form: “Newborn Child Declaration”. The SA Health Registered Midwife or Medical Practitioner should complete the “Proof of Birth declaration” and instruct the surrogate mother that she must register the birth of the child born from the surrogacy pregnancy.
 - the surrogate mother and/or the intended parents requiring information regarding government support payments should be should be directed to the Australian Government website:
<https://www.servicesaustralia.gov.au/individuals/subjects/how-enrol-and-get-started-medicare/enrolling-your-baby-medicare>

3.4 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 intended 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 intended parents in this instance are acting ‘*in loco parentis*’ in relation the child¹. 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 intended 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 child¹. (This application for a Parentage Order must be made within 4 weeks - 6 months of the child’s birth.)

5. National Safety and Quality Health Service Standards

 National Standard 1 Clinical Governance	 National Standard 2 Partnering with Consumers	 National Standard 3 Preventing & Controlling Healthcare-Associated Infection	 National Standard 4 Medication Safety	 National Standard 5 Comprehensive Care	 National Standard 6 Communicating for Safety	 National Standard 7 Blood Management	 National Standard 8 Recognising & Responding to Acute Deterioration
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6. Definitions

Intended 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 previously included the surrogacy legislation provides an understanding of the range relationships between parent(s) and child ³
Mother, birth 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 ¹ Note under the 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 child born under recognised surrogacy arrangements; for the purposes of this policy will be known as "Parentage Order" ¹ . These can only be made where the child was born under a 'recognised' surrogacy agreement and the intended parents are domiciled in South Australia. Once this order is made, the intended parents are considered to be the parents of the child ³ .
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 Wellbeing
SA Health employees	Includes any person employed within the Department for Health and Wellbeing
Surrogacy agreement	An agreement 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. Surrogacy Act 2019 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 to Medical Treatment and Palliative Care Act 1995 ²

7. References

1. SA Government. Surrogacy Act 2019 (version 1.9.2020). Available at: <https://www.legislation.sa.gov.au/LZ/C/A/SURROGACY%20ACT%202019/CURRENT/2019.31.AUTH.PDF>
2. SA Government. Consent to Medical Treatment and Palliative Care Act 1995 (version 29.3.2015). Available at: <https://www.legislation.sa.gov.au/lz/c/a/consent%20to%20medical%20treatment%20and%20palliative%20care%20act%201995/current/1995.26.auth.pdf>
3. SA Government. Family Relationships Act 1975 (version 1.9.2020). Available at <https://www.legislation.sa.gov.au/lz/c/a/family%20relationships%20act%201975/current/1975.115.auth.pdf>
4. SA Health. Perinatal Practice Guidelines, available at: www.sahealth.sa.gov.au/perinatal
5. SA Health. Standards for Maternal and Neonatal Services in SA 2021, available at www.sahealth.sa.gov.au/perinatal
6. Jevé YB, Potdar N, Opoku A, Khare M, Donor oocyte conception and pregnancy complications: a systematic review and meta-analysis, BJOG., 016 Aug;123(9):1471-80. doi: 10.1111/1471-0528.13910. Epub 2016 Feb 8.
7. SA Health. SA Pregnancy Record Guidelines. Available at www.sahealth.sa.gov.au

8. Document Ownership & History

Document developed by: SA Maternal Neonatal Gynaecology Community of Practice

Next review due: 04/02/2026

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2/1/2017	V1	SA Health Safety & Quality Strategic Governance Committee	Original version