

GESTATIONAL SURROGACY PROGRAM APPLICATION PROCESS AND GUIDANCE

REFERENCE MATERIALS

The following reference materials are a useful guide to compiling the required application materials and should be reviewed by applicants considering becoming licensed as a New York State (NYS) Gestational Surrogacy Organization prior to initiating the application process.

- The Surrogacy Programs regulations under Sections 69-11.1 through 69-11.10 of [10 NYCRR Subpart 69-11](#).
- The Department's website entitled the Child-Parent Security Act/Gestational: <https://health.ny.gov/community/pregnancy/surrogacy/>.
- Article 5-C of the Family Court Act, which can be found [here](#).
- The [Surrogates' Bill of Rights \(SBOR\)](#).
- The Practice Committee of the American Society for Reproductive Medicine and Practice Committee of the Society for Assisted Reproductive Technology [Recommendations for Practices Utilizing Gestational Carriers](#).

ACQUIRING A NYS GESTATIONAL SURROGACY LICENSE

1. An organization must first establish a Health Commerce System (HCS) account in order to apply for licensure. For organizations that are not currently affiliated with the HCS, please contact the New York State Department of Health (NYSDOH) Gestational Surrogacy Program (GSP) to assist your organization with creating an HCS user account. They can be reached at: gestationalsurrogacyprogram@health.ny.gov

Note: Existing HCS account holders still need to contact the GSP in order to link their current account to the Gestational Surrogacy Organization.

2. Once an organization has an established HCS account they may begin the licensure process by emailing the Gestational Surrogacy Program to request an application packet.

GESTATIONAL SURROGACY PROGRAM APPLICATION PROCESS

3. The licensure process requires the completion of the application form. Additionally, an owner's attestation form for each owner, chief executive officer and chief operating officer is required. The organization must also submit its policies and procedures, along with their administrative documents. Specific language can be found in both the required documents below, as well as within the *Reference Materials* at the beginning of this document.

Once all required documents have been compiled and saved in a pdf format, they should be emailed to the GSP at: gestationalsurrogacyprogram@health.ny.gov

DO NOT MAIL HARDCOPIES WITH THE APPLICATION FEE.



4. Payment Information

To process your licensure request a **non-refundable application** fee (\$1,000.00 for initial licensure or \$200.00 for licensure renewal) is required. Please submit a personal check, money order or bank certified check, made payable to "NYS Department of Health" and mail to:

NYS Department of Health
Gestational Surrogacy Program
P.O. Box 2096
Albany, NY 12220

REQUIRED DOCUMENTS TO BE SUBMITTED WITH THE APPLICATION FORM

1. Owner, Chief Executive Officer and Chief Operating Officer Documentation: Please provide the following information for each individual(s) functioning as the chief executive officer, the chief operating officer, and for each owner:

- a. The true full legal name, date of birth and home address;
- b. A photocopy of the State Driver's license or State photo I.D;
- c. Provide photocopies of any degrees, certifications and licenses or other professional designations if applicable;
- d. Provide a resume or CV dating back at least 5 years;
- e. All information on allegations of malpractice, actions taken against the individual's license, hospital restrictions, any and all criminal convictions, civil court actions and bankruptcy court actions, disputes settled through arbitration or alternative dispute resolution, whether the individual is aware of being under investigation by a governmental agency, whether a criminal charge or civil or administrative action is currently pending against the individual, and termination from employment. Please note this should reflect any adverse finding(s) noted in the background report;
- f. A photocopy of the Gestational Surrogacy Program's EIN Tax I.D. document/letter from the Internal Revenue Service; and
- g. Satellite Offices - Provide physical addresses for all locations operating under the business entity applying for licensure.

2. Administrative Policies and Procedures Manual: Submit your organizations Administrative Policies and Procedures (APP) Manual that include, but are not limited to, the requirements below. ***The APP manual should be comprehensive in scope, meet all requirements of the Child-Parent Security Act, and include language consistent with the American Society for Reproductive Medicine's Guidelines.***

The following requirements include:

- a. Policies and procedures to ensure that surrogacy agreements meet all requirements of Article 5-C of the Family Court Act;

Procedures for the Gestational Surrogate and Partner:

- b. Policies and procedures that outline the selection, screening and testing of gestational surrogates and partner;
- c. Policies and procedures that outline the psychosocial evaluation and counseling for gestational surrogates and partner which is consistent with clinical best practices;



- d. Policies and procedures to ensure the surrogate has given **Informed Consent** for the surrogacy and is afforded all rights set forth in the **Surrogates' Bill of Rights** in Article 5-C of the Family Court Act at the time of the initial consultation; and
- e. Disqualifying factors and absolute rejection criteria for gestational surrogates (*define*).

Procedures for the Intended Parent(s):

- f. Policies and procedures that outline the screening and testing of intended parent(s) in accordance with Article 5-C of the Family Court Act;
- g. Policies and procedures that detail the psychosocial evaluation and counseling of prospective intended parent(s) consistent with clinical best practices;
- h. Disqualifying factors and absolute rejection criteria for intended parents (*define*); and
- i. Policies and procedures to monitor all parties' compliance with the terms of the surrogacy agreement (*include a statement that the provider will ensure they remain in regular contact with the parties to the surrogacy arrangement throughout the arrangement to monitor the parties' compliance with the terms of the surrogacy agreement*) and include related training materials for all staff of the organization.

3. Conflict of Interest Policy: Provide a copy of your Gestational Surrogacy Organization's Conflict of Interest policy which prohibits at minimum, the following:

- a. Any sort of kickback or making or receiving a referral for a fee, except for fair market value fees paid by a surrogacy organization to an employee or independent contractor of the surrogacy organization for promoting the surrogacy organization and identifying potential surrogates;
- b. Fee-splitting;
- c. Financially benefitting from a referral, including a family member benefitting from a referral;
- d. Ordering or arranging for excessive tests, treatment, or use of treatment facilities not warranted by the condition of the patient;
- e. Making self-referrals, that is, referrals to health care providers with which the surrogacy organization has financial relationships (other than financial relationships that would be commercially reasonable even if no referrals were made between the parties); and
- f. Entering into an arrangement with a clinical laboratory under which the clinical laboratory does not directly bill the patient as required by Public Health Law section 586.

4. Professional Liability Insurance Policy: Provide a copy of the organizations professional liability insurance policy (proof of coverage) that includes a minimum amount of \$750,000 coverage.

5. Informed Consent Form: Provide a copy of the organization's **Informed Consent Form** that includes a placeholder for executing the document with a signature and date for both the surrogate and intended parent(s), written in plain language and available in English or the language the individual giving consent is most proficient in reading.

This shall include, **at a minimum**, the following:

- a. A statement that the surrogate has been informed that their name and address will be kept on file by the surrogacy program;
- b. A statement that the surrogate has been advised of their option to volunteer to participate in the surrogacy registry upon completion of the surrogacy agreement;
- c. HIPAA-compliant authorization for disclosure of the surrogate's relevant medical history information to prospective intended parent(s) and their physicians, consistent with statutory requirements for the disclosure of medical information;



- d. A statement that the surrogate has the right to terminate the surrogacy agreement prior to becoming pregnant by means of assisted reproduction pursuant to Article 5-C of the Family Court Act;
- e. A statement regarding the surrogacy organization's screening of prospective surrogates and the criteria assessed therein; and
- f. A copy of the Surrogates' Bill of Rights, as set forth in Article 5-C of the Family Court Act.

6. Submit a copy of your organization's Gestational Surrogates' Bill of Rights form that incorporates the salient points below (Pursuant to Part 6 of Article 5-C of the Family Court Act).

Surrogates have the right to the following:

- a. Health and welfare decisions (*define*);
- b. Independent legal counsel (*define*);
- c. Health insurance and medical costs (*define*);
- d. Life Insurance (*define*) *The policy must cover a minimum benefit of at least equal to \$750,000. or the maximum amount the gestational surrogate qualifies for; and*
- e. Termination of surrogacy agreement (*define*).

All medical, life insurance and legal counsel are to be provided and paid for by the intended parent(s).

7. Background Investigation Report and Credit Report: Provide a current background investigative report from an independent licensed private investigator (PI) acceptable to the NYSDOH, that includes the investigators or company's license number. (Note: A licensed PI company is different than an online background broker where a licensed PI has undertaken the necessary training and their work is approved by an official body.) **The investigative report must include a 10-year lookback and:**

- a. Demonstrate that the owners of the program, the individual functioning as the chief executive officer, and the individual functioning as the chief operating officer, **regardless of adjudication**, have never previously been convicted or found guilty of, or entered a plea of guilty, or a plea of nolo contendere to any offense involving racketeering, fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property;
- b. Specify any judgments and liens filed with the county clerk in counties and all counties contiguous to those counties where the owners of the program, the individual(s) functioning as the chief executive officer and the chief operating officer of the program, have worked, and resided within the past **10 years**; and
- c. Include a copy of a current comprehensive credit report which includes a credit score for each owner.

For questions, contact the NYSDOH Gestational Surrogacy Program at:

Email: gestationalsurrogacyprogram@health.ny.gov

Phone: 888-364-0048