

PROPOSAL FOR A MANDATORY HEALTHCARE PROGRAM FOR SURROGATES IN SURROGACY ARRANGEMENTS

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Abstract

Background: Surrogacy is controversial. The issue of surrogates' exposure to legal, ethical, health and social risks has been globally debated, and most literature explores policies and regulations that could be crafted or reconsidered to protect surrogates from such hazards. However, a discussion is lacking on the need for surrogacy healthcare programs (SHPs), although surrogacy has been possible for over four decades.

Objectives: This paper aimed to examine the existence (or lack) of SHPs and identify healthcare program needs to protect surrogates from risks in building surrogacy arrangements.

Methods: An interdisciplinary, nonsystematic literature review and media content analysis were conducted. Medline (Ovid) and PubMed were searched for articles published between 2012 and 2022. In addition, three search engines, Google, Bing and Yahoo, were used to identify high-profile and landmark cases to supplement the literature review.

Results: Seventy-eight articles were retrieved, but only 2 were reviewed. Using the 3 search engines, 53 cases were identified; however, 42 were duplicates, and only 11 were analyzed. The results suggested that SHPs do not exist. High-profile and landmark cases demonstrate a need to educate prospective surrogates.

Conclusion: SHPs should be compulsory for prospective surrogates to promote their well-being, and proposals for such programs should be further studied and implemented in healthcare policies.

Keywords: Surrogacy, Surrogacy arrangement, Surrogates, Education, Educational program, Healthcare

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Introduction

Surrogacy arrangements have been conducted since the 1980s; however, the possibility of creating surrogacy healthcare programs (SHPs) has never been thoroughly examined.⁽¹⁾ Surrogates, who commit to carrying a baby for intended parents, comprise a vulnerable population sector; they are at risk of exploitation, and their voices are often overridden in forming surrogacy arrangements.⁽²⁾ Due to the lack of SHPs, surrogates may misunderstand their rights or not comprehend the potential risks involved in the treatment process. Consequently, surrogates are exposed to greater than normal legal, ethical, health and social risks.^(3,4)

Several studies have investigated surrogates' health-related risks and advocated to protect their health at policy and regulation levels. For example, in some countries, such as the US, where commercial surrogacy is legal, firm policies and regulations (P&R) are in place to protect surrogates. Surrogates must receive legal advice and counseling and be provided their fully informed consent before conception.⁽⁵⁾ In Australia, where altruistic surrogacy is allowed, strong policies are in place to protect the surrogate's health and optimize perinatal outcomes, such as a single embryo transfer (SET) policy for gestational surrogacy to prevent multiple pregnancies.⁽⁶⁻⁸⁾ However, in countries where P&R are not established, laying the groundwork for surrogates' understanding of health-related facts and promoting their well-being is necessary. Education is one strategy for implementing health promotion programs for the target population.⁽⁹⁾ Health education offers learning experiences on related health topics, including health benefits and threats. One broad purpose

of health education is to increase individuals' knowledge and ensure their well-being by addressing and supporting P&R.⁽¹⁰⁾ Health education builds individual health literacy and empowers patients. This paper aims to review the existence (or lack) of SHPs and to identify gaps in education for further development.

Methods

An interdisciplinary, nonsystematic literature review and media content analysis were conducted (**Figure 1**). Journal and original research articles and high profile and landmark cases published in English between 2012 and 2022 were identified. In addition, the author queried key search terms on Medline (Ovid) and PubMed, including surrogates, surrogate mothers, surrogacy, gestational surrogates, educational programs and healthcare programs.

The review centered on articles that discussed surrogacy education or SHPs. The literature was restricted to: (1) articles about the bio-ethical components of surrogacy, or arguments for/against it, that did not mention educational or healthcare programs and (2) studies on surrogacy arrangements and outcomes.

To supplement information found in the literature, the review also included sources from media such as news, reports, government agency websites and surrogacy agency websites. Three search engines (Google, Bing and Yahoo), which are considered the top three search engines in the world (updated in 2022),⁽¹¹⁾ were searched to further identify high profile and landmark cases. The media search was performed in January 2022 using the following phrases: high profile surrogacy cases and landmark surrogacy cases. Examining both the peer-reviewed literature and media content allowed the author to identify gaps in knowledge about healthcare program needs.

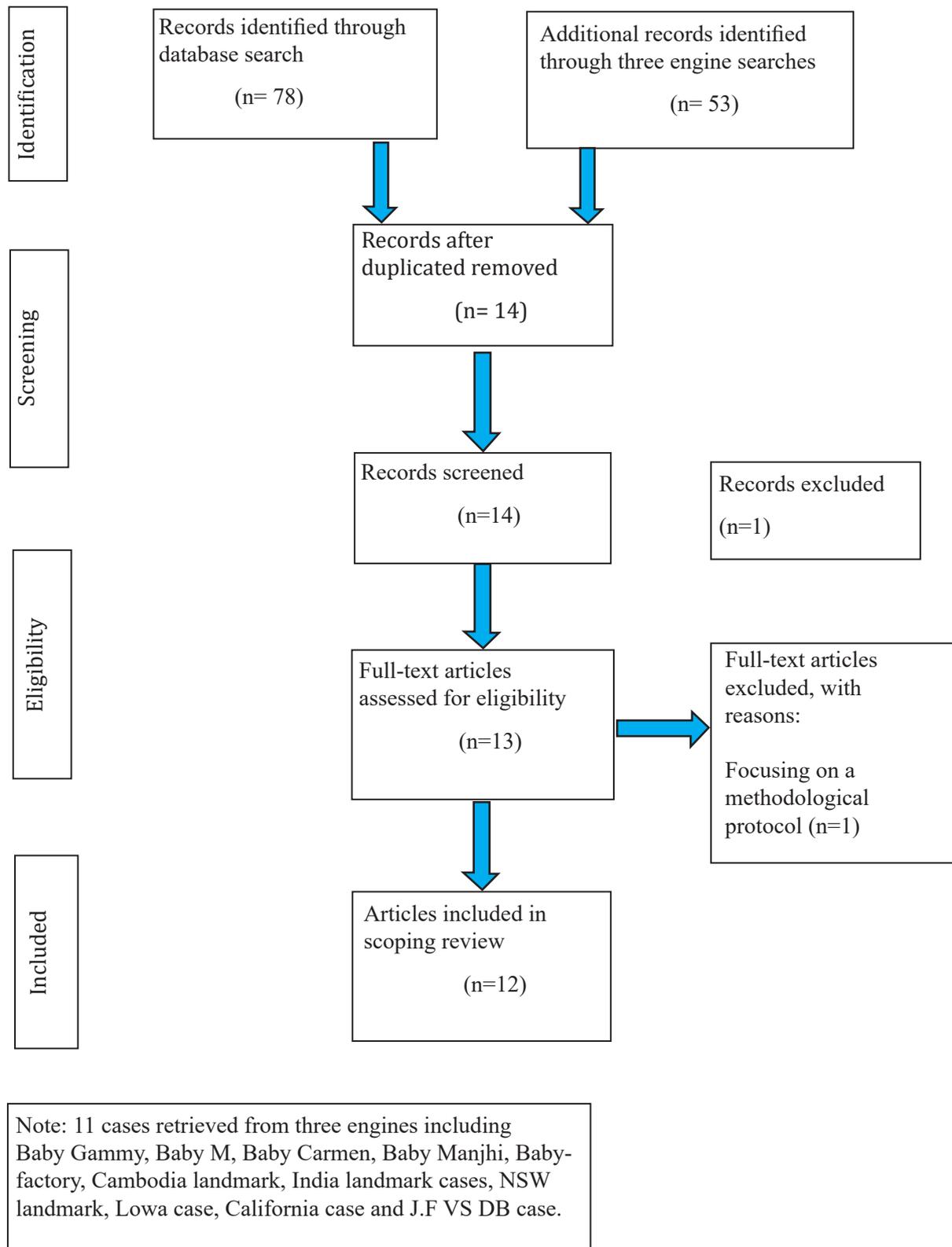


Figure 1: Search results

Results

Results from search strategies

The Medline (Ovid) search produced three articles, one of which was reviewed. The search of PubMed generated 75 articles, of which only one met the criteria for review, but it comprised a duplicate of the article identified through Medline (Ovid). The search Google led to 34 cases, Bing produced 9 cases and Yahoo generated 10 cases. The surrogacy cases identified by Bing and Yahoo were duplicated in Google. (Figure 1.)

The review identified one article about a healthcare program and 11 that covered high profile and landmark surrogacy cases. The findings suggested that SHPs were not practically implemented at policy and regulation levels. However, many studies and government agencies highlighted the importance of education to protect surrogates from health-related risks. Some surrogacy agency businesses^(12, 13) provide education to surrogates through consultations before they enter a surrogacy arrangement; however, this could indicate a conflict of interest. Importantly, SHPs should be emphasized in surrogacy P&R. Countries' health departments and services could play a vital role in delivering educational programs to prospective surrogates to raise their awareness of risks, as well as to deepen their knowledge of surrogacy, identify their beliefs and opinions and enhance their self-efficacy and personal power.

Based on the above, two major themes emerged from the review: (1) building health literacy and (2) autonomy and self-knowledge.

Building health literacy

Health literacy is critical when using a health-related service and understanding the information needed to make appropriate decisions. Health literacy has been put forward as the pathway to education and health outcomes. In addition, education level is associated with the ability to comprehend health information, affecting one's capacity to maintain or improve one's health.⁽¹⁴⁾ Hence, it would be unsurprising that people with low education may have poor health outcomes.⁽¹⁴⁾

In surrogacy, several high profile cases suggested that surrogates typically have low income and uneducated status.^(15,16) Reflecting on education level, surrogates have less knowledge of surrogacy and the health risks involved, including the physical dangers resulting from complications of embryo transfer, pregnancy and delivery modes, as well as psychological, psychosocial and legal risks. For example, Tanderup and colleagues⁽¹⁷⁾ found that none of the 14 surrogates they investigated could explain or understand the complications of multiple embryo transfer (MET) and multiple births. An interview by Attawet and peers⁽¹⁸⁾ also supported the notion that surrogates are at risk during the surrogacy process:

I had three cycle attempts for embryo implantation. In each cycle, I received a triple embryo transfer. I became pregnant in the third embryo transfer cycle. At week 8 of my gestation, I had a regular check-up, and the doctor could not detect the baby's heartbeat. I was informed that I had to undergo a D&C [dilatation and curettage] procedure. The procedure was really painful, and I took a while to recover. I received less payment because I could not get through the pregnancy and delivery process. I received only 30,000 THB [approximately USD 960]. This was not worthwhile, and I swore I would not be a surrogate again. (p. 5)

From this perspective, less health literacy knowledge could have been a barrier to the surrogate's ability to access or understand the health information affecting her regarding the health-related risks she might encounter. Research⁽¹⁹⁾ suggests that people with limited health literacy are less likely to ask clinicians questions or to seek further information. Although education level is associated with the pathway of health literacy and health outcomes, healthcare systems should take proactive steps to promote people's well-being. Providing appropriately targeted health education programs using universal health literacy precautions is a clear strategy to improve people's understanding of health information, regardless of their literacy level or education.⁽²⁰⁾

Autonomy and self-knowledge

The surrogacy context often involves informed information and consent. In surrogacy practice, the philosophy of autonomy has been revisited many times and its application among surrogates is ethically debated. Inadequately informed consent coercion, and dependence on decision-making often happen in surrogacy arrangements, especially in commercial surrogacy.^(2, 17) Referring to philosophical autonomy, consent can be obtained through three standard approaches, namely, (1) the subjective standard: what an individual would need to know and understand for informed decision-making; (2) the reasonable patient standard: the information needed for patients to decide on their treatment and (3) the reasonable physician standard: a clinician's explanation of the procedure's nature to aid a patient's decision.⁽²²⁾ One of these approaches requires an assessment of the patient's understanding of the treatment procedure, including benefits and risks.⁽²¹⁾ Therefore, the exercise of autonomy in the surrogacy process is needed for the surrogate's full knowledge and understanding of the treatment.

The healthcare provider must provide clear information to support patients' self-determination in their treatment. This depends on drawing the patient's attention to the fact that her self-knowledge is connected to her use of autonomy and could effectively support self-decision-making in the treatment. Thus, building surrogates' health literacy can bridge the gap between their autonomy and self-decision-making.

Discussion

The content analysis of the themes revealed a lack of health promotion for surrogates and SHPs. This issue should be brought forward and established in the healthcare system in the same way as other available programs for health promotion. In addition, government agencies should offer mandatory SHPs at the policy and regulation levels.

Although many theories exist concerning applying pedagogy in education, this paper does not discuss the form or approach that the education of surrogates should take. Instead,

the author argues for the urgent need for SHPs. To date, no healthcare programs have been available to educate surrogates to help them better understand surrogacy arrangements, treatment and potential risks. In addition, although information about surrogacy is available on the Internet, some information might not be reliable.⁽²²⁾ The most accessible information comes from the recruiting agencies offering surrogacy services to intended parents.⁽²²⁾ Such information mainly focuses on the benefits of becoming a surrogate, but information about risks is largely lacking.⁽²²⁾ Some government websites—such as that of Australia's Victorian Assisted Reproductive Treatment Authority (VARTA)⁽²³⁾—offer reliable information. However, they might not be easily accessible or be of limited use to surrogates whose first language differs from the website.

To ensure optimal use of the surrogate's autonomy and to avoid the influence of interested parties in the surrogate's decisions, the risks involved in the surrogacy process should be proposed in an educational context as discussed below.

1. Health risks, such as MET, multiple pregnancies, and cesarean section (C-section)
In one study, almost 80% of surrogates were likely to receive MET, resulting in 30% of the women birthing multiple children.⁽²⁶⁾ MET is an incentive for surrogates who accept to carry multiple pregnancies.^(15, 16) Hence, before accepting the incentive model, surrogates should fully understand the risks of multiple pregnancies for themselves and their babies. Such surrogacy education could also help to formulate P&R in the future to protect surrogates from the risk of MET and possible exploitation by the surrogacy industry.

C-sections should also be included in the program. C-sections are commonly forced on surrogates to suit intended parents who are foreigners and must fly back to their countries on a preferred date.⁽²⁴⁾ Therefore, educating surrogates on the pros and cons of C-sections is necessary for them to make informed choices about their bodies and to discuss the matter with healthcare professionals. Further, this would help surrogates in their preparation and awareness of self-care.

2. *The risk of legal aspects when surrogates move across borders*

As is well known, surrogates frequently move across borders in response to efforts by the commercial surrogacy industry to avoid having to comply with local surrogacy laws. Unfortunately, this has increased surrogates' exposure to legal risk in the country of the transfer. For instance, after Cambodia banned commercial surrogacy in 2016, 33 surrogates were imprisoned in that country in a high-profile case and charged with human trafficking⁽²⁵⁾. Therefore, before entering (commercial) surrogacy, in the context of education, potential surrogates should be aware of the legal risks involved in protecting their rights. This education would benefit surrogates and possess the advantage of framing international regulations to prevent cross-border surrogacy.

3. *Understanding the context of psychosocial risks*

Taking on the role of surrogate motherhood is problematic. Parental attachment and responsibility are likely to arise and cause complications in a surrogate's obligations. Although surrogates can address their psychological well-being regarding baby attachment when coping with relinquishment.⁽²⁶⁻²⁸⁾ There have been cases of surrogates bonding with the baby. For example, Baby Carmen was born to a Thai surrogate who changed her mind about delivering the baby to the intended gay parents; however, the intended parents later won the case as the surrogate failed to return to court.⁽²⁹⁾ Although the surrogate had claimed to be a victim of human trafficking, the fact was that she wished to keep the baby in Thailand, and the true reason for her wish was not known. The issue of baby attachment and relinquishment often becomes delicate and has been well discussed in the literature;^(26, 30) surrogates should be educated on this point to help them prepare mentally.

The scandal of Baby Gammy, who was left with his Thai surrogate mother when his intended Australian parents abandoned him, is another example of parent attachment and responsibility. In this case, the surrogate willingly accepted responsibility for Baby Gammy as one of her

children after he was left in Thailand. The facts later clarified that at some point, the surrogate grew very attached Baby Gammy and his female twin, and she decided to keep Baby Gammy.^(31, 32) As such, what would happen if a baby were left with a surrogate who was not physically or financially capable of raising the baby? Who would be responsible for this matter? Would the surrogate's pregnancy become a stigma?

Accordingly, education on managing psychosocial problems should be provided to raise the awareness of surrogates. These issues demonstrate the complexity of surrogacy treatment and highlight many matters that could go wrong that need to be addressed to develop regulations to cover all parties.

4. *Understanding the context of surrogacy contracts and the signers' rights*

The surrogacy contract is one of the most important documents in the surrogacy process. Before starting the surrogacy process, surrogates must fully understand and accept the conditions for their obligations.⁽³³⁾ While potential surrogates in the US receive mandatory legal counseling before deciding, in Southeast Asian countries, such as India and Thailand, no such process to support surrogates.^(34, 35) Reportedly, the rights of surrogates in India and Thailand have often been taken away. Indian surrogates had to reside in restricted areas provided by the surrogacy agency or fertility clinic.⁽²⁾ Likewise, according to news reports, Cambodian surrogates had to live in a hostel provided for the duration of their pregnancy.⁽²⁵⁾ The worst part of this process was that the surrogates had to stay away from their families, which could cause psychological harm. In addition, they did not have access to insurance, postnatal counseling or other services.⁽³⁴⁾ Apart from the legal and ethical matters involved, surrogates should seriously consider other risks, such as health, financial and emotional hazards, along with potential irregularities in the legal contract. Yet, suppose surrogates are unable to understand a comprehensive contract. In that case, they could be misled and remain unaware of the risks, with the outcome that they fail to speak up for their rights and unintentionally accept the risks by signing the contract. In the

context of not receiving legal counseling, an educational program is critical to support surrogates' understanding of the contract. Not only do educational programs need to address this issue, but international policies or regulations should frame it so as to protect surrogates' rights.

This proposal for an educational program is a recommendation from the standpoint of public health to improve surrogates' well-being. This paper initially proposed an SHP to address problems with surrogacy at the individual and interpersonal levels. Evidence exists that surrogates have limited knowledge and understanding of the risks involved in surrogacy treatment.^(2, 17) Many strategies are available to build surrogates' knowledge, but this paper proposes education in the form of a compulsory SHP before starting the process. However, this paper only reviewed knowledge and issues arising from high-profile cases without critically examining surrogates' education level. To move toward a more comprehensive health perspective, one recommendation is that research or surveys seeking support from the public and healthcare organizations for SHPs be included as an operable part of planning.

Conclusion

To protect surrogates' health and advocate for them, all governments should adopt SHPs in their P&R. This paper suggests that SHPs be made compulsory for women who want to become surrogates before starting the process. A complete understanding of surrogacy treatment and potential risks can ensure the optimal use of surrogates' autonomy in making decisions and enhance their perspectives on health.

Declaration of conflicting interests

The author declared no potential conflicts of interest for this article's research, authorship, and publication.

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