

**Inside This Issue**

**About CSP**

**Surrogacy and Insurance**

**Advertisement Project**



## Surrogacy and Insurance

### No Wait For Fully Screened Surrogates

For the last few years CSP has heavily invested in advertising for surrogate mothers, restructured our screening process and computerized our surrogate mother intake forms. The response to our new structure has been overwhelmingly positive from these lovely ladies. In addition, the investment has paid off for our couples as well. We can now process surrogate mothers through our program in a more efficient way facilitating the matching process with our intended parents.

For the first time in CSP's 30 year history, we are now proud to offer NO WAITING for surrogate mothers:

\*\* Fully psychologically screened

\*\* Medically screened

\*\* Medical insurance in place that has been reviewed and approved by an independent attorney.

CSP recently attended the annual meeting of ASRM (American Society for Reproductive Medicine) held in Atlanta, Georgia. ASRM is an organization devoted to the advancement of knowledge and expertise in reproductive medicine. It is a yearly meeting attended by most infertility doctors, attorneys and mental health professionals in the US and from around the world. CSP regards the ASRM meetings as a way for us to keep us in touch with new technologies and recent research projects worldwide, and it affords us the opportunity to renew our relationships with professionals in our field. We find it interesting that very few agencies see the need to attend ASRM meetings. For CSP, attending ASRM is essential to our ability to keep abreast of the latest technology and studies, and we cannot imagine any professional in this field not attending such an important meeting. A further benefit to attending ASRM is our interaction with doctors, mental health professionals and other agencies. This year was a wonder of information to CSP. Of particular interest was how other agencies handle the issue of insurance coverage for newborn babies where the parents are non-US residents.

Perhaps we need to step back and concisely outline a history of insurance in the field of surrogacy.

In the early to mid-1980's almost all surrogacy was traditional surrogacy, commonly referred to as AI (artificial insemination) surrogacy.<sup>1</sup> At the time of the baby's birth the surrogate mother's name was entered on the birth certificate. A Judgment of Paternity was then sought allowing the Intended Father's name to be entered on the birth certificate. There was never an issue about insurance coverage for the newborn child because for a time there was only one legal parent of the child, the surrogate mother.

As technology marched on, the legal system was forced to adapt. First the courts permitted pre-birth Judgments of Paternity to be issued. With the advent of IVF, some courts permitted a pre-birth Judgment of both Paternity and Maternity. The courts in California recognized that the names of the Intended Parents of the child should be on the original birth certificate as the Mother and Father. It was around this time insurance became complicated for non-US residents. The argument asserted by the insurance companies is logical: if the surrogate mother is not the legal parent of the child, can make no medical decisions for the child and never intended to parent the child, then she cannot add the newborn to her insurance policy. The Intended Parents on the other hand have a birth certificate reflecting their names, intend to raise

<sup>1</sup> AI/Traditional surrogacy: This is where the sperm from the intended father is inseminated into the surrogate mother. The surrogate mother's egg is used and she is genetically related to the child she carries for her couple.



the child, can legally make medical decisions for the child and therefore have the right to add the newborn to their policy.

There is no insurance problem when the Intended Parents have a US issued medical insurance policy. For a while BUPA, a British based company, offered a policy that covered newborn babies when the birth was taking place outside of the Intended Parents' home country. However, in 2007 BUPA decided to discontinue coverage for newborn babies born through surrogacy in the US. Overnight the issue of insurance for newborns became a major problem in the field of surrogacy.

This brings us back to the ASRM meeting in Atlanta, Georgia. At that meeting we met with several professionals as they talked about their surrogacy programs and how they dealt with the issue of insurance. We learned that one program on the East Coast enrolls surrogate mothers in the Medicaid program and, at the time of delivery, the surrogates register the child for Medicaid assistance. Another



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agency keeps the surrogate mother's name on the birth certificate in the event the child is born with medical problems. This same agency also offers the option of entering the Intended Parents' names on the birth certificate, but if the newborn has medical problems, they instead obtain an Order of Guardianship for the surrogate mother so she can add the child to her insurance.

In our opinion, the option of Medicaid is an outrageous suggestion on so many levels. The fact that a surrogate mother is financially eligible for Medicaid is to be questioned. One of the earliest rules CSP instituted and almost every agency has abided by for years, is that any applicant who receives government assistance should not be considered a valid candidate for surrogacy. The reasons are numerous: her ability to purchase nutritional food during the pregnancy, her ability to pay her rent, the fact that she receives money as a surrogate mother and yet is still receiving social welfare from the state, and a concern that the underlying enforceability of the contract could be brought into question because of a claim of economic duress and coercion. In addition there is the urban myth that women become surrogate mothers for the money and that wealthy couples entice welfare moms to help them have children. This is not a good story for

your child! As well, to be eligible for Medicaid the income of the entire family is taken into consideration and there must be no other insurance option available. This means the surrogate and her family must be earning a very low income and must illegally withhold the fact that she is receiving money from surrogacy. It also means the father of the child is unable to purchase an insurance policy for his child and must not be able to financially pay or contribute to his child's care. We cannot imagine a couple who desire a child entrusting the well-being of their baby to a surrogate who is so underprivileged. Medicaid fraud is to perpetuate a fraud upon the United States since this is a Federal program and any violation is a violation of Federal laws.

Another agency offers to place the surrogate mother's name on the birth certificate as the legal mother. That would require that the contract the Intended Parents sign with their surrogate mother state that the surrogate mother is the legal mother. As a consequence, in the event she changes her mind about relinquishing the child to the Intended Parents, there would be NO breach of contract. Further she is entitled to all compensation under the contract as well as possibly suing for child support. As the legal mother it can be argued that she cannot be sued

for smoking or taking drugs, or for not following doctor's orders, and can terminate or decide not to terminate the pregnancy without having to consult with the Intended Parents. So long as it is everyone's intention that the surrogate mother's name and the Intended Father's name appear on the birth certificate forever, there is no problem. If, on the other hand, there is a clause in the contact that dictates the newborn be added as a dependent to the surrogate mother's insurance but, at the same time, there is a clause or a verbal understanding between the parties that the surrogate mother will relinquish her parental rights when the child is healthy, then there is insurance fraud. In such a case the contract may be used as evidence to prove the fraud and all participants (surrogate and her husband, the couple and all attorneys and professionals involved) are potentially liable. We cannot imagine why any couple would want to put their surrogate mother and her family in such a terrible situation.

Alternatively the issue of obtaining an Order of Guardianship is also problematic. Apart from the fact that it is fraud to request such an Order purely for the purpose of committing insurance fraud, such an Order places ultimate medical decision making authority with the surrogate mother instead of you, the parents of this precious newborn child. If this Order is in force only until the



newborn is healthy then the purpose for the Order is to defraud an insurance company. Therefore under this option the Intended Parents, surrogate mother, attorneys and agency are all guilty of committing fraud upon the courts and insurance companies.

CSP has approached the issue of insurance for a newborn baby from a very different prospective.

1. First, we have established a network of couples in each country. When a couple finds an insurance policy that actually covered their newborn costs, we request they forward this information to us. Most European countries have policies that our couples have been successful in using for their newborns.
2. There are a few countries where there is no option of insurance coverage. There are, however, alternatives for these couples. There is an insurance policy underwritten by Lloyds of London. Two insurance brokers in the US offer this policy.
3. Some state laws dictate that the surrogate mother's name is to be listed on the birth certificate as the legal mother. As such, she is entitled to add the child to her insurance policy. In such a case the surrogate mother advises her

insurance company that she will be adding this child to her policy and obtains their approval. It must be understood that she is the legal mother of the child because the state law dictates her name be entered on the birth certificate. The Intended Father's name will also appear on the birth certificate. As discussed above, she retains all the rights and privileges of parenthood until such time as she relinquishes or abandons her rights in favor of the other Intended Parent. There is no insurance fraud because the insurance company is advised of the full situation prior to conception.

In our opinion there is simply no justification to resort to working with welfare recipients, defrauding the state insurance system that is meant to provide insurance coverage to families in need or to defraud a court in applying for an Order of Guardianship. CSP has been helping couples legally become parents for almost 30 years. There is **always** a legal way to resolve a problem. CSP has never failed to find the legal solution for our couples while protecting the best interests of their child and eliminating any legal and criminal exposure to the parties.

Please call us to discuss your unique circumstances and how CSP may best assist you.



*CSP is proud to announce the launching of our website in Spanish: [www.creandofamilias.com](http://www.creandofamilias.com)*

# HAPPY HOLIDAYS!

## Advertising For a Good Cause

Over the years, CSP has celebrated over 1400 glorious births, but no program is without unique cases which pull at the heartstrings. CSP has decided to allow advertising in our newsletter and 100% profits will be allocated to special projects.

What will qualify as a special project will be determined by the directors of CSP, Bill Handel and Karen Synesiou, and details will be published on our website.

Here are some of the stories that helped pave the way for this special fund. In 1996, one of our surrogate mothers decided to help her prior couple have a second child. At 26 weeks of pregnancy the baby was diagnosed with Cystic Fibrosis. It was devastating to learn the news, but even worse to find out the intended parents were not ready to take on this responsibility. This unfortunate turn of events changed the lives of

everyone involved forever. CSP makes financial contributions to her surrogate parents who are now her family.

In another case, one of our little babies had to have his legs amputated at birth due to a birth defect. His parents are average income earners and spend all their available funds on prosthetics, with little left over for luxuries. Two years ago CSP found out that Liam had a dream of competing in a bike race with his elder brother. CSP decided to help the family by getting him a special racing bike made to accommodate his unique needs. The photograph we received of him and his brother at the bike race was worth the world to us.

Most recently, in 2009, the husband of one of our surrogate mothers was diagnosed with terminal cancer. He had always dreamed of taking his son to Disneyland and now that appeared to be out of reach to him. CSP flew the family to Los Angeles so that they could enjoy three days together at Disneyland. He has since passed away, but his son will always have the memories of their trip together.

These are just a few examples of the unique cases we have encountered over the years. Helping families like these is a priceless opportunity we have at CSP. We want to continue supporting more

like them, but we need contributions in order to keep giving in the future. The CSP newsletter will be published online monthly, and advertisement opportunities will be available with 100% of the profits being allocated to these special projects.

To inquire about advertising in our newsletter, or to offer assistance to special projects, please contact Perla Piekutowski, at (818) 788-8288 ext. 132, or by e-mail at [perla@creatingfamilies.com](mailto:perla@creatingfamilies.com).

