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Crossroads: The Many Choices on the Path to Parenthood Through Assisted Reproduction

The path to parenthood through assisted reproduction has always required hopeful parents to make complex decisions. Today, advances in reproductive technologies, coupled with a resurrected politicalization of *in vitro* fertilization (IVF) and LGBTQ+ rights, challenge intended parents with more life-altering choices than ever before.

Access to a vast array of medical procedures and legal arrangements should be celebrated and can be exciting and empowering for intended parents, but the options often become overwhelming. While individual circumstances dictate which decisions an intended parent may face, this article highlights some of the possible considerations that could lie ahead.

Third-Party Reproduction Arrangements

Third-party reproduction refers to arrangements that involve an individual other than an intended parent in the reproductive process. Examples of third-party reproduction include sperm or egg donation and surrogacy arrangements. Some intended parents, and especially LGBTQ+ intended parents, know that their path to parenthood will inevitably involve a third-party, while others may have never considered the option before confronting the complex decision to pursue gamete donation and/or surrogacy. Either way, there are complicated choices inherent to the process.

Donor Gametes

Intended parents using donor gametes (eggs and/or sperm) to conceive must decide between a “directed” donation arrangement—i.e., when the donor and the intended parents are known to one another—and one in which the donor and intended parents are anonymous (at least at the outset). When best practices are followed, in either situation, intended parents will have access to medical, family, and genetic history of the donor, but with directed donation the intended parents may have additional firsthand knowledge of the donor, and the arrangement may enable other practicalities, including opportunities for multiple donations and streamlined sharing of information. Advances in

commercial genetic testing—including ancestry.com and 23andMe—have undermined the possibility that any “anonymous” arrangement will remain so, which intended parents must consider.

The highly personal choice may be dictated by intended parents’ intentions regarding future contact between themselves and/or their children and the donor, their desire for a genetic link to the donor (i.e., in the case of a donor who is a relative), and/or their interest in controlling the number of other recipient families to whom the donor donates.

Increasingly, donor-conceived individuals are speaking out about directed versus “anonymous” gamete donation, which can be instructive to intended parents. State laws may also factor into the decision, as some states have specific requirements regarding donor conceived individuals’ access to their donor’s information.



There are also options for sourcing donor gametes when the donor is not known. Some intended parents may choose to work with a cryobank or donor agency, whereas others may obtain gametes through their IVF clinic's donor bank.

Surrogacy

From start to finish a surrogacy journey presents a host of considerations for hopeful parents: whether to match with a surrogate independently or through an agency; geographic proximity to a surrogate; whether a surrogate has been a surrogate before; a surrogate's religious beliefs if those beliefs could impact pregnancy decision-making, to name a few. Many intended parents pursuing surrogacy have never navigated a pregnancy themselves, which can make the multitude of choices even more daunting to navigate.

Intended parents who elect the agency route must next choose which agency to work with. This decision may be dictated by estimated costs, predicted wait times to match, and many additional factors. Concierge services are also increasingly available, presenting yet another option.

Intended parents who pursue an independent surrogacy journey may match with a surrogate on social media or on platforms specifically built to match intended parents and surrogates, or may prioritize working with a surrogate to whom they have a pre-existing personal connection.

Many surrogates live in states with restrictive abortion and selective reduction laws, calling upon intended parents to assess their personal comfort level with the risks of such limitations.

Embryos

Before undergoing IVF and creating embryos, patients must make dispositional elections at the fertility clinic about the fate of their embryos in case of divorce, separation, death, and/or incapacitation, which elections can include a decision to destroy or donate the embryos or to allow use by the surviving party. Patients may further choose to memorialize their elections in a freestanding embryo disposition agreement.

There is also the question of how many IVF cycles to pursue and how many viable embryos constitute "enough." Often, an (understandable) desire to increase the odds of a successful live birth will lead to the creation of surplus embryos. While hopeful parents may find comfort in knowing they have the option of multiple pregnancy attempts, more embryos remaining in storage means more dispositional decisions.

Finally, parents who create embryos must decide whether to perform pre-implantation genetic testing/screening on the embryos, and depending on the outcome of that testing, must make decisions about which embryos, if any, to transfer in hopes of achieving a pregnancy.

Choice of Law

Parentage laws pertaining to children conceived through assisted reproduction vary by state, as do laws defining "personhood" and reproductive freedoms. This results in choice of law considerations.

For intended parents who undergo IVF and create embryos, if the embryos are stored in a state where the laws regarding embryo disposition—and increasingly the concept of "personhood"—are uncertain, intended parents may face the choice of whether to transfer their embryos to a "safe-haven" state.

Intended parents who engage in third-party arrangements must also consider the varying parentage proceeding processes that exist state-by-state. Many states have adopted laws that allow intended parents to obtain a pre-birth order establishing their exclusive legal parentage of the subject child immediately upon birth. However, some states only allow for interim decision-making authority or post-birth establishment of legal parentage, and in certain circumstances, the ability to obtain a pre-birth order can vary by county. Intended parents must weigh these factors, which can also be impacted by sexuality and marital status, when deciding in which jurisdiction to pursue third-party reproduction.

Conclusion

Some of the choices hopeful parents face when on the path to parenthood through assisted reproduction have a clear answer dictated by law. However, most considerations are highly personal and lack a "right" answer. Arguably, the most important decision intended parents can make is to surround themselves with knowledgeable professionals who can provide guidance throughout the process. **FA**

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