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Using family members as gamete donors or gestational carriers

Ethics Committee of the American Society for Reproductive Medicine

American Society for Reproductive Medicine, Birmingham, Alabama

The use of adult intrafamilial gamete donors and gestational surrogates is generally ethically acceptable when all participants are fully informed and counseled, but consanguineous arrangements or ones that simulate incestuous unions should be prohibited. Adult child-to-parent arrangements require caution in order to avoid coercion, and parent-to-adult child arrangements are acceptable in limited situations. Programs that choose to participate in intrafamilial arrangements should be prepared to spend additional time counseling participants and ensuring that they have made free, informed decisions. This document replaces the document of the same name, last published in 2012 (Fertil Steril 2012;98:797–803). (Fertil Steril® 2017;107:1136–42. ©2017 by American Society for Reproductive Medicine.)

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KEY POINTS

- The use of adult intrafamilial gamete donors and gestational surrogates is generally ethically acceptable except when such arrangements are consanguineous or simulate incestuous unions.
- Providers should be prepared to spend more time screening and counseling participants in familial gamete donor and surrogacy arrangements as compared with those involving anonymous or unrelated gamete donors and surrogates. Requests for intergenerational gamete donation or surrogacy are especially challenging.
- Care should be taken to avoid coercion and ensure fully informed consent when using intrafamilial gamete donors and gestational surrogates.
- All Assisted Reproductive Technology (ART) programs should develop policies and procedures for dealing with requests for the use of family members as donors or surrogates.
- Research on the long-term impact on parents, offspring, and relatives involved in intrafamilial reproduction should be encouraged.

Collaborative or third-party reproduction is sometimes considered by couples or individuals who either lack eggs, sperm, or a uterus, or whose gametes or uterus cannot be used due to medical reasons. Gamete donation is a recognized method to enable infertile couples without viable eggs or sperm to conceive. Gestational surrogacy is indicated when the uterus is absent or abnormal, when the female partner for medical reasons cannot gestate a pregnancy, or in cases where a single male or same-sex male couple utilize ART to have a child. The practice of traditional surrogacy, in which the surrogate provides the egg as well as her uterus, is discouraged by this Committee (1) and will not be discussed in this opinion.

While collaborative reproduction usually involves anonymous or unrelated known individuals, some couples prefer to involve a family member in the arrangement. This may occur intragenerationally between siblings or cousins of similar ages, such as a sister providing eggs for a sister or a brother donating sperm to a brother. It may also occur intergenerationally, as when a mother gestates her daughter's embryos or a father provides sperm to his infertile son.

Some possible collaborative reproductive arrangements that involve family members are listed in Table 1. This table and the following discussion involve primarily first-degree relatives. The use of second-degree relatives such as cousins, nephews, or aunts and uncles raises similar issues, but for simplicity these arrangements are omitted from the table and most of the subsequent discussion.

While familial collaboration may offer advantages over the use of unrelated donors and surrogates, it also presents unique challenges. These include issues of apparent though not actual incest (i.e., sexual relations between two closely related individuals) or consanguinity (i.e., reproduction between individuals who are closely related genetically), undue influence to participate, and possible confused parentage for resulting children (2–7). Limited data have been collected regarding the

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TABLE 1

Potential intrafamilial collaborative reproductive arrangements among first degree relatives.

Arrangement	Resulting genetic and social relationships of offspring	Comments
I. Sperm donation		
Brother-to-brother	Social paternal uncle is genetic father; other relationships unchanged	Most acceptable intrafamilial sperm donation
Brother-to-sister	Rearing mother is also genetic and gestational mother; social uncle is genetic father	Gives strong impression of incest, but not strictly illegal because neither sex nor marriage are involved; should be prohibited because gametes from a consanguineous relationship are combined (sister is genetic mother and brother is genetic father)
Brother-to-sister (sister uses donated eggs)	Rearing mother is gestational mother, but has no genetic relationship to offspring; social uncle is genetic father; some cousins are half-siblings; most other relationships unchanged	Gametes are not from consanguineous relationship; not prohibited, but may create impression of incest or consanguinity
Brother-to-sister's wife	Gestational mother and her female partner are rearing mothers; non-gestational mother has a genetic relationship to the child	Generally acceptable. Brother will be genetic father and social uncle to child; brother's partner (if he has one) should be involved in decision making
Father-to-son	Social paternal grandfather is genetic father; rearing father is genetic half-brother	Acceptability may depend upon attitude of female partner
Father-to-daughter (daughter uses donated eggs)	Social maternal grandfather is genetic father	A proposal for this arrangement involving a divorced daughter who lived with her father has been discussed (2); Gives strong impression of incest
Son-to-father	Rearing father is genetic grandfather; offspring's social half-brother is genetic father; genetic paternal grandmother is usually rearing father's ex-wife	Usually second marriage for father; significant concerns for undue pressures on son; should be discouraged
II. Ovum donation		
Sister-to-sister	Social aunt is genetic mother; some cousins are half-siblings; most other relationships unchanged	Probably most common and most accepted arrangement
Sister-to-sister-in-law (brother's wife)	Social aunt is genetic mother	Should be prohibited because gametes from consanguineous relationship are combined; gives strong impressions of incest, never reported
Sister-to-brother's husband	Sister is genetic mother and social aunt	Generally acceptable. Sister's partner (if she has one) should be involved in decision making
Daughter-to-mother	Rearing mother is genetic grandmother; offspring's social half-sister is genetic mother; rearing mother's ex-husband is usually genetic maternal grandfather	Usually second marriage for mother; concerns for coercion of daughter are significant; utmost care should be taken to ensure informed consent
Mother-to-daughter	Social maternal grandmother is genetic mother; offspring is half-sister of rearing mother	Not reported; age of mother would make success unlikely
III. Gestational surrogacy		
Sister-for-sister	Genetic relationships unchanged; social maternal aunt is gestational mother	One of first reported cases of gestational surrogacy
Sister-for-brother	Genetic relationships unchanged; social aunt is gestational mother	Gives impression of incest, but gametes are not from consanguineous relationship
Sister-for-brother's husband	Genetic relationship is unchanged; social aunt is gestational mother	Generally acceptable. Sister's partner (if she has one) should be involved in decision making
Mother-for-daughter	Genetic relationships unchanged; social maternal grandmother is gestational mother	Health of older mother should be considered; should ensure daughter is not obligated to mother
Daughter-for-mother	Genetic relationships unchanged; social half-sister is gestational mother	Not reported; age of mother would make success unlikely (unless using donor eggs)
Daughter-for-father	Genetic relationships unchanged; social half-sister is gestational mother	Not reported; gives impression of incest

ASRM. Family members as donors or gestational carriers. Fertil Steril 2017.

attitudes, motivations, and experiences of donors and recipients in such arrangements (8–10). Also limited is information on the impact on children born as a result of such arrangements (11–13).

The Ethics Committee in this document concludes that the use of adult gamete donors and gestational surrogates who are family members is in many cases ethically acceptable, but requires special care to avoid coercion and to assure informed consent. Providers of ART involving family members should pay special attention to the aforementioned issues of consanguinity, risks of undue influence on decisions to participate, and the chance that the arrangement

in question will cause uncertainty about lineage and parenting relations.

There is a paucity of data on the use of familial gamete donors and surrogates in assisted reproduction. The number of requests for intergenerational familial gamete donation and the number of these procedures performed are unknown. Similarly, there are no specific data on intrafamilial gestational surrogacy. Gestational surrogacy arrangements are much less common than gamete donation. They may be expensive, complex, and restricted by law in some states. Cases of intrafamilial gestational surrogacy do occur as originally reported in a sister-for-sister gestational surrogacy using donor sperm reported in 1988 (14). Since that time, many cases of intrafamilial gestational surrogacy have been reported (15–18).

THE CASE FOR FAMILIAL COLLABORATION

Individuals and couples who use familial gamete donors and gestational surrogates face a novel set of issues as compared with those using anonymous gamete donors and unrelated gestational surrogates. The reasons for seeking a familial donor or surrogate are varied. While some individuals are willing to use an unrelated or anonymous donor or surrogate, others would much prefer finding third-party reproductive assistance in the family. For some couples or individuals, gametes from family members may be preferred because they preserve the family's genetic heritage and kinship. For others, a family member may be selected as a donor or surrogate to expedite the process or to reduce costs.

Familial gamete donation ensures that some portion of the infertile person's genes will be passed to the offspring, thus maintaining a kinship tie that would be lost if an unrelated donor were used. In one of the few reports about known sperm donors, family involvement was chosen so that the infertile male could feel a ''genetic closeness'' to his child (19). Thus, using a sibling's gametes will result in rearing a genetic nephew or niece who has some, but usually less than 50%, of the infertile person's genes. Intergenerational donations, such as father-to-son sperm donation or daughter-to-mother egg donation, also involve the transfer of some of the recipient's genes to the offspring. The value of maintaining genetic kinship may be an important reason some people find anonymous egg or sperm donors unacceptable. Family members who donate may also view the process favorably. They contribute additional progeny to their kindred while also contributing to the well-being of a kin relation.

In the case of lesbian, gay, bisexual, or transgender individuals, familial gamete donation allows for maintaining a genetic relationship with the offspring. For example, a brother donating sperm to his sister's wife allows his sister to have a genetic connection to her child while her female spouse has both a genetic and a gestational relationship with the child. Similarly, a sister may donate her eggs to be fertilized with her brother's husband's sperm, so that the child can have a genetic relationship with each of the fathers. In the case of gestational surrogacy, a sister may carry an embryo created with an egg donor and her brother's husband's sperm, allowing for collaborative familial reproduction and cost saving.

One motivation for selecting a familial donor or surrogate is reduction of costs and waiting times. Reproductive technologies are expensive, often not covered by insurance plans, and in some areas may require long waits or be unavailable. The involvement of a family member may in some cases result in significant financial and time savings for the intended parent(s), and enable some to have a procedure that would not otherwise be available to them. An oligozoospermic man may prefer sperm donation from his identical twin rather than pay for in vitro fertilization with intracytoplasmic sperm injection (ICSI), in part because he considers that his twin brother's sperm are identical to his own. A sister providing eggs is unlikely to request payment and the recipients can avoid a potentially long waiting period for an anonymous egg donor. Similarly, paid surrogacy is legally prohibited in some jurisdictions and, where allowed, may be prohibitively expensive, leading some couples and individuals to turn to family members for assistance.

Intrafamilial organ donation may provide a useful analogy to intrafamilial gamete donation, although substantial differences exist. The successful practice of intrafamilial donation of kidneys, bone marrow, and even liver segments is well established and represents a vital alternative to organ donation from non-related living or cadaveric donors. Organ donation carries greater risk than gamete donation, but it may be life-saving and is widely accepted. Although procreation may seem to be a less pressing need than treating end-stage organ failure, having children is highly valued and can greatly increase personal and family well-being. Because altruism within families is especially valued, allowing family members to accept the lesser risks of gamete donation or surrogacy in service of the fertility goals of close family members should also be ethically acceptable. Assessing or judging motivations such as love, devotion, loyalty, and duty within an intimate family may be best left to those family members, as long as providers involved in these arrangements have paid due regard to informed consent, free decision making, and the welfare of the child-to-be (20).

CONCERNS ABOUT INTRAFAMILIAL COLLABORATIVE REPRODUCTION

Intrafamilial collaborative reproduction raises ethical concerns distinct from concerns raised by other donor or surrogate arrangements. These include concerns regarding whether a donor or surrogate closely tied to and perhaps dependent on the recipient couple would be able to make a free and fully informed decision. Also concerning are questions surrounding the consequences of the novel resulting relationships on the donor or surrogate, donor-conceived persons, and rest of the family. New genetic relationships that would otherwise be impossible are created, and this can change family dynamics. The lack of information regarding these important questions illustrates the knowledge gaps that exist and highlights the importance of pursuing formal investigation into the implications of these new family relationships on the various affected parties. In the meantime, providers should not hesitate to share these concerns in the course of counseling their patients.

Impermissible Collaborations

Laws against incestuous sexual relations and consanguineous marriages are ways in which society regulates reproduction. Sexual relations, marriage, and reproduction between two closely related individuals have long been taboos, because of concerns about the risk of birth defects and genetic diseases as well as concerns about social disruptions and conflict that such relations could raise. Laws banning sexual relations and marriage between certain classes of individuals would not ban gamete donation or surrogacy involving these same individuals because no sexual relations or marriage would have occurred. However, the risks of consanguinity are the same and gamete donation in such situations is therefore impermissible.

Under this approach, a sister may provide eggs for a sister or a brother may provide sperm for a brother, but a brother may not provide sperm to fertilize a sister's eggs or a sister provide eggs to be fertilized by a brother's sperm. Similarly, a father should not provide the sperm to replace that of his daughter's infertile husband. Nor should a mother provide eggs to replace those of her son's infertile wife. A different situation arises when a sister provides the eggs for her brother's infertile wife to be inseminated by a donor, or a brother provides sperm to a sister to use with an anonymous egg donor. Neither case duplicates the results of incest or consanguinity, so should not be barred. However, such arrangements may give the appearance of incestuous or consanguineous unions, and the potential implications of such appearances should be addressed in counseling.

Similarly, persons aware that a woman is gestating the embryo of her mother and stepfather may conclude that sexual relations have occurred. In cases of daughter-to-mother egg donation, the donor's contribution to her stepfather's child may also be perceived as incestuous. Special care should be taken in such arrangements to avoid coercion and to assure fully informed consent.

Although this report focuses on first-degree relatives, the Committee notes that restrictions on fathers as sperm donors to daughters with infertile husbands should also bar the daughter's paternal or maternal uncles from serving as a sperm donor to her. Similarly, the maternal or paternal aunts of a son with an infertile wife should not serve as an egg donor for the wife of that son if he would also provide the sperm. Sexual relations or marriage between first cousins is not illegal in some states. Rather than address the different combinations that might arise from gamete donation or surrogacy among first cousins, we note that a recent review found that procreation between first cousins added a 1.7% to 2.8% risk of major malformations and genetic diseases to a background risk of 3% to 4% (21).

Undue Influence and Autonomous Decision Making

A major concern in familial collaborative reproduction is protecting the autonomy of the contributing donor or surrogate from manipulative or undue influences by family members who would benefit from their participation. Those risks may be greater with intergenerational than with intragenerational collaboration, but could occur with both arrangements. For example, a daughter may feel obligated to donate eggs or act as a gestational surrogate for her mother and the mother's partner because she is still financially or emotionally dependent on her. Some individuals may exert great influence over their siblings and persuade them to be donors against their better judgment. In all cases, minors should not be allowed to serve as gamete donors or gestational surrogates in familial collaborative reproductive arrangements.

The risk of undue influence may depend on the physical and emotional closeness of the donor or surrogate to the recipient couple, the maturity of the participating family members, and other issues such as financial dependency. Some emotional distance may be necessary for the donor or surrogate to make a free and fully informed decision. This may be especially difficult to achieve when a parent requests a child's involvement in collaborative reproduction. Some writers argue that because undue influence cannot be eliminated in child-parent relationships, a truly free decision to participate in such cases of collaborative reproduction is impossible (6). The highest level of care should be taken to avoid coercion in cases of child-to-parent gamete donation or when a daughter is considering acting as a gestational surrogate for her mother.

The concerns that emotional or financial coercion, whether overt or unconscious, make daughter-to-mother or son-to-father donations extremely difficult to assess. For example, the complicated intrafamilial relationships in the case where a daughter has a shared genetic connection with her mother's partner through the donor-conceived child independent of her mother raises serious concerns. Furthermore, the impact on the donor-conceived person as well as the interests of the donor's children should be considered. A donor-conceived child would be both genetic half-sibling and aunt or uncle to the donor's children and the emotional impact of this relationship is not understood. Special care should be taken in such arrangements to avoid coercion, including the provision of mental health consultation for all involved parties. Such consultation should include counseling regarding the potential emotional and psychological risks in an effort to ensure informed consent.

It may be easier to achieve emotional distance and minimize undue influence in other circumstances. For example, a couple might request help from a cousin who lives in another city and will have very little contact with any offspring. A father might decide to donate sperm to his son as an extension of his parental role in meeting his children's needs. Similarly, a mother who volunteers to be a gestational surrogate for her daughter may view her involvement as just another way to help her children achieve their goals in life. In each case, the free and informed decision making of all participants must be assured. The risk of undue influence in intrafamilial organ donation is well recognized and is at least as great as in intrafamilial reproductive collaboration. Screening and counseling procedures developed to ensure free and fully informed consent in intrafamilial organ donation, such as separate interviews and counseling of the involved parties, are transferable to intrafamilial reproductive situations.

Emotional Harm to Donor or Surrogate

Donors and surrogates in these intrafamilial arrangements are exposed to emotional as well as physical risk. They may expect special recognition from family members and others for their efforts, but, instead, may be met with negative feelings from many sources. Gamete donation and surrogacy are not always looked on favorably by the general public or even by other family members. If the procedures are not successful in establishing a pregnancy, the infertile individuals may direct anger at the donor or surrogate. If the child has a genetic or birth defect, the donor or surrogate may blame herself or himself or feel blamed by others; the long-term stresses associated with a disabled child may be projected upon the involved donor or surrogate.

Familial donors and surrogates also need to undergo genetic and infectious disease screening procedures, including a 6-month quarantine of sperm (22), which they may not have expected and may find objectionable. They may also contend with the reactions of their own partners to their involvement in the reproductive goals of a family member. In one survey of known sperm donors including family donors, 25% said the donation process led to a deterioration of the relationship between the infertile couple and the donor (19). This deterioration was related to the attitude of the donor's partner, who had not been involved in the decision to donate sperm.

Donors or surrogates may have difficulty detaching themselves from the children, especially when they have a genetic link to the offspring of the arrangement. Yet, if the parties have been careful in drafting and signing the necessary documents to clarify legal parenting relationships, the familial donor or surrogate will have no more legal parenting or visitation rights than would an unrelated known or anonymous donor. If conflict among family members develops, the situation could be especially painful for familial donors and surrogates who may no longer be allowed to contact or visit a genetically related child (23).

Impact on Offspring and Family Relationships

A primary concern is the potential impact of these arrangements on children and families. Children can never consent to the circumstances of their conception, even if they later become aware of them and suffer from conflicts or disruptions that those circumstances bring. Persons entering into these relationships should be especially sensitive to the social and psychological complications that might ensue and take special care to ensure that the child's welfare is protected. While studies have overall shown positive psychological outcomes for children born from the donation of gametes from family members or when a family member acts as a surrogate, these studies have involved a small number of individuals. Further studies examining the well-being of such children should be encouraged (11–13).

Knowledge of the actual genetic relationships among the participants could contribute to a profoundly altered view of identity and family relationships (Table 1). Medical and mental health professionals have raised concerns about the emotional consequences that could occur (5, 6), and have emphasized the need to pay special attention to the psychological needs of children born of such relationships. When contemplating using a family member as a gamete donor or gestational surrogate, counseling of all parties to the arrangement should be the first step in the process. This counseling should include not only the intended parents, the gamete donors, and the gestational surrogates, but also the partners and children of the gamete donors and gestational surrogates. In such a way, clinicians can ensure that informed consent is obtained by all parties.

Larger societal concerns are raised by these arrangements as well, because they may create new genetic relationships never before possible. A woman could not otherwise gestate a child conceived with her daughter's egg, for whom she is the genetic grandmother. The offspring's genetic lineage becomes very confusing, further complicating the concept of the family. The importance of the goal to preserve genetic linkages may be questioned when the reproductive arrangements become so extraordinary and complex.

Although new genetic relationships may be created from these family collaborations, the impact of these few families on society would probably be minimal. Some writers have argued that families resulting from reproductive technologies such as gamete donation actually mirror our society's norms (24, 25). Complicated family arrangements are often the products of divorce and remarriage. Most third-party reproduction involving family members should not be alarming in today's society with an increasingly complex concept of the family. These arrangements will add complexity to only a small number of families.

SCREENING, COUNSELING, INFORMED CONSENT, AND LEGAL COUNSEL

The Committee finds that for the use of familial donors and surrogates to be ethically acceptable, special care must be taken to ensure that the interests of all parties are protected. To do so, providers should be prepared to spend more time screening and counseling participants in familial gamete donor and surrogacy arrangements as compared with those involving anonymous or unrelated gamete donors and surrogates. Requests for intergenerational gamete donation or surrogacy are especially challenging.

To enhance the likelihood that familial collaboration will be a positive experience, the involvement of professionals representing multiple disciplines, including physicians, nurses, and counselors, should be anticipated for a thorough assessment. Adequate time is essential to evaluate proposals for these arrangements. Prospective donors or surrogates should have a physician whose responsibility it is to care for them and be their advocate. Clinics not equipped to provide these services should choose to refer patients to a center where these services are offered.

Programs should strongly recommend that prospective participants, including partners of donors and surrogates, undergo psychological counseling by a professional experienced in surrogacy or gamete donation (22). These visits should focus attention on how participants will cope with the unique aspects of the proposed arrangement and on the consequences for the prospective child.

The potential emotional consequences to the child should be a primary concern when discussing these arrangements. If children are informed of their intrafamilial conception or gestation, specialized counseling may be desirable as they get older, especially for arrangements that give any impression of incest or result in altered views of identity and family relationships. The ethical issues related to disclosure are discussed in more detail in the ASRM ethics document, “Informing offspring of their conception by gamete donation” (26).

The process of obtaining informed consent from the requesting individuals and the donor or surrogate should involve a thorough discussion of potential medical and emotional risks to all parties and to the anticipated child. Clinicians should make efforts to ensure that gamete donors and surrogates have made their decisions to participate in these reproductive arrangements voluntarily and free of manipulation or undue influence. They should also offer prospective donors and gestational surrogates the option of being excluded as participants without other family members learning of their reluctance to participate. Financial incentives, including direct and indirect payment and inheritance, should not be so substantial that they become inducements that may lead the prospective donor or surrogate to discount the risks associated with the procedure (27).

Current standards governing anonymous sperm and egg donation and surrogacy should be followed in regard to screening of the proposed sperm or egg donor for infectious and genetic diseases. Semen specimens should be frozen and quarantined according to published guidelines for sperm donation (22). In many cases the delay that results from this quarantine will discourage a couple from pursuing intrafamilial sperm donation. When sperm or egg donation is chosen to prevent a certain genetic disease, careful genetic counseling should be done before intrafamilial gamete donation is allowed.

An important part of the informed consent process is informing the participants of the legal parenting relations that will result from the arrangement. Together with the law of the state or jurisdiction in which the familial collaboration occurs, documents signed concerning gamete donation and surrogacy will determine the legal parenting relations among recipients, donors, and surrogates and resulting children. State law will also determine whether children are the heirs of the donor or surrogate or the recipient-rearing parents when an intrafamilial participant dies without a will. Participants in these arrangements, including partners of donors and surrogates, should seek independent legal advice from attorneys with specific expertise in third-party reproduction to determine their legal rights and duties in entering into these relations.

Finally, in certain cases requests should be denied immediately. Due to potential undue influence by a parent, older sibling, or other relative, programs should not allow minors, as defined in each state, to participate in these arrangements. Gametes from first-degree consanguineous relationships (e.g., brother-to-sister without donated eggs) should never be used together to initiate a pregnancy. Providers should participate with care in intrafamilial arrangements that give the impression of incest or improper consanguinity (see Table 1), though exceptional cases where adequate provision for those risks have been made may be acceptable.

CONCLUSIONS AND RECOMMENDATIONS

All ART programs should develop policies and procedures for dealing with requests for the use of family members as donors or surrogates. Although programs have no obligation to provide such services, the Ethics Committee finds that many intrafamilial reproductive arrangements, including both intragenerational and some intergenerational arrangements, will be ethically acceptable and satisfying, but that others should be rejected on grounds of consanguinity or because of the difficulty in assuring free, informed consent. The most problematic requests are usually a parent requesting the involvement of his or her child in gamete donation or surrogacy. In these cases, and when the assessment reveals consistent concerns about undue pressures on the prospective donor or surrogate, or about unhealthy family dynamics, the program is ethically justified in denying access to these procedures.

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