

Regulation No. 12

Private/Independent Adoptions

The following regulation, as adopted by the Association of Administrators of the Interstate Compact on the Placement of Children, is declared to be in effect on and after October 1, 2012. Words and phrases used in this regulation have the same meanings as in the Compact, unless the context clearly requires another meaning. If a court or other competent authority invokes the Compact, the court or other competent authority is obligated to comply with Article V (Retention of Jurisdiction) of the Compact.

1. Definitions:

(a) "Adoption" is the method provided by state law that establishes the legal relationship of parent and child between persons who are not so related by birth or some other legal determination, with the same mutual rights and obligations that exist between children and their birth parents. This relationship can only be termed "adoption" after the legal process for adoption finalization is complete.

(b) "Adoption Home Study" is a home study conducted for the purpose of placing a child for adoption with a placement resource. The adoption home study is the assessment and evaluation of a potential adoptive parent.

(c) "Adoption Facilitator" is an individual that is not licensed or approved by a state as an adoption agency, child-placing agency, or attorney, and who is engaged in the matching of birth parents with adoptive parents.

(d) "Independent Adoption" is an adoption arranged by a birth parent or other person or entity as designated, defined, and authorized by the laws of the applicable state or states, to take custody of and to place children for adoption.

(e) "Independent Adoption Entity" is any individual or entity authorized by the law of the applicable state or states to take custody of and to place children for adoption and to place children for adoption other than a state, county, or licensed private agency.

(f) "Intermediary" is any person or entity who is not an Independent Adoption Entity as defined above, but who acts for or between any parent and any prospective parent, or acts on behalf of either, in connection with the placement of the parent's child born in one state, for adoption by a prospective parent in a different state.

(g) "Legal Risk Placement" means a placement made preliminary to an adoption where the prospective adoptive parents acknowledge in writing that a child can be ordered returned to the sending state or the birth mother's state of residence, if different from the sending state, and a final decree of adoption shall not be entered in any jurisdiction until all required consents or termination of parental rights are obtained or are dispensed with in accordance with applicable law.

(h) "Legal Risk Medical Statement" is an acknowledgment by the prospective adoptive parents that known physical, emotional, or other relevant history of the child has been disclosed.

(i) "Private Agency" is a licensed or state approved agency whether domestic or international that has been given legal authority to place a child for adoption.

(j) "Private Agency Adoption" is an adoption arranged by a licensed or approved agency whether domestic or international that has been given legal custody or responsibility for the child including the right to place the child for adoption.

2. **Intent of Regulation No. 12:** The intent of this regulation is to provide guidance and ICPC requirements for the processing of private agency or independent adoptions. The ICPC process exists to ensure protection and services to children and families involved in executing adoptions across state lines and to ensure that the placement is in compliance with all applicable requirements. It is further the intent of Regulation No. 12 for the sending agency to comply with each and every requirement set forth in Article III of the ICPC that governs the placement of children therein.

3. **Application of Regulation No. 12:** This regulation applies to children being placed for private adoption or independent adoption whether being placed by a private agency or by an Independent Adoption Entity, as defined herein, or with the assistance of an Intermediary, as defined herein, and as in compliance with the other articles and regulations.

4. **Conditions for placement as stated in ICPC Article III:** Prior to sending, bringing, or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(a) The name, date, and place of birth of the child.

(b) The identity and address or addresses of the parents or legal guardian. If the identity or address of a birth parent and/or legal parent is not provided, an explanation as to why it has not been provided shall be included to the extent that it is consistent with the laws of the applicable state.

(c) The name and address of the person, agency, or institution to or with which the sending agency proposes to send, bring, or place the child.

(d) A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

Compliance with this requirement may be met by submission of the documentation required under Section 6 below.

5. **Legal and financial responsibility during placement:** For placement of a child by a private agency for independent adoption, the private agency shall be:

(a) Legally responsible for the child, including return of the child to the sending state if the adoption does not occur during the period of placement.

(b) Financially responsible for the child absent a contractual agreement to the contrary or a statement by the prospective adoptive parent or parents that they will assume financial responsibility.

6. Sending agency or party case documentation required with ICPC-100A private agency/independent adoption request:

(a) For placement by a private agency or independent entity, the required content to accompany a request packet for approval shall include all of the following:

- (1) ICPC-100A: Form requesting ICPC approval to make placement;
- (2) Cover letter: A request for approval signed by the person requesting approval identifying the child, birth parent(s), the prospective adoptive parent(s), a statement as to how the match was made, name of the intermediary, if any, and the name of the supervising agency and address;
- (3) Consent or relinquishment: signed by the parents in accordance with the law of the sending state, and, if requested by the receiving state, in accordance with the laws of the receiving state. If a parent is permitted and elects to follow the laws of a state other than his or her state of residence, then he or she should specifically waive, in writing, the laws of his or her state of residence and acknowledge that he or she has a right to sign a consent under the law of his or her state of residence. The packet shall contain a statement detailing how the rights of all parents shall be legally addressed;
- (4) Certification by a licensed attorney or authorized agent of a private adoption agency or independent entity that the consent or relinquishment is in compliance with the applicable laws of the sending state, or where requested, the laws of the receiving state;
- (5) Verification of compliance with Indian Child Welfare Act (25 U.S.C. 1901, et. seq.);
- (6) Legal risk acknowledgement signed by the prospective adoptive parents, if applicable in either the sending or receiving state;
- (7) Statement of authority: A copy of the current court order pursuant to which the sending agency has authority to place the child or, if the authority does not derive from a court order, a statement of the basis on which the sending agency has authority to place the child and documentation that supervision is on-going;
- (8) Current case history for the child, including custodial and social history, chronology of court involvement, social dynamics, education information (if applicable), and a description of any special needs of the child. If an infant, at a minimum, a copy of the medical records of the birth and hospital discharge summary for the child, if the child has been discharged;
- (9) Foster home license: If the receiving state placement resource previously lived in the sending state and that state has required licensure, certification, or approval, a copy of the most recent license, certificate, or approval of the qualification of the placement resource(s) and/or their home showing the status of the placement resource as a qualified placement resource, if available. If the receiving state placement resource was previously licensed, certified, or approved as a foster or adoptive parent in the sending state and such license, certificate, or approval was involuntarily revoked, a statement of when such revocation occurred and the reasons for such revocation;

(10) Adoptive home study or approval: A copy of the most recent adoption home study or approval of the prospective adoptive family must be provided, including, in accordance with the law of the receiving state, verification of compliance with federal and state background clearances, including FBI fingerprint and Child Abuse/Neglect clearances and Sex Offender Registry clearance, a copy of any court order approving the adoptive home (if entered), and a statement by the person or entity that the home is approved or a revised current home study update if the home study is more than 12 months old;

(11) A copy of the Order of Appointment of Legal Guardian, if applicable;

(12) Affidavit of Expenses, if applicable; and

(13) Copy of sending agency's license or certification, if applicable;

(14) Biological parents' information—social history, medical history, ethnic background, reasons for adoption plan, and circumstances of proposed placement. If the child was previously adopted, the adoptive parents shall provide the information set forth in this section for the biological parents, if available;

(15) A written statement from the person or entity that will be providing post-placement supervision (may be included in adoption home study) acknowledging the obligation to provide post-placement supervision; and

(16) Authority for the prospective adoptive parents to provide medical care, if applicable.

(b) If a home study is completed by a licensed private agency in the receiving state, the sending state shall not impose any additional requirements to complete the home study that are not required by the receiving state unless the adoption is finalized in the sending state.

7. **Authorization to travel**: Additional documents may be requested

(a) Except as set forth herein, the child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child. Art. III(d).

(b) The sending and receiving state ICPC office may request additional information or documents prior to finalization of an approved placement. Travel by the prospective adoptive parents into the receiving state with the child shall not occur until the required content of the request packet for approval has been submitted, received and reviewed by the sending and receiving ICPC offices and approval to travel has been given, provided, however, a receiving state may, at its sole discretion, approve travel while awaiting provision of additional documentation requested.

8. **Approval by the receiving state ICPC office**: A provisional or final approval for placement must be obtained in writing from the receiving state ICPC office in

accordance with the Interstate Compact on the Placement of Children. A signed Form 100A must be provided by the receiving state if the writing was in any other form. In any event, approval or denial must be given within three (3) business days of the receipt of the completed packet by the receiving state Compact Administrator.

9. Upon placement of a child by the sending agency following approval by the receiving state Compact Administrator, the sending agency shall, within five (5) business days of placement of the child, submit a completed 100B form confirming placement to the sending state Compact Administrator. Upon finalization of the adoption, if the sending agency is a private adoption agency, the private adoption agency shall provide to the sending state Compact Administrator a copy of the final judgment of adoption together with a 100B form for closure, which shall then be sent to the receiving state Compact Administrator within thirty (30) business days of entry of judgment. Upon finalization of an independent adoption, the sending agency or entity shall provide a copy of the final judgment of adoption together with a 100B form for closure within thirty (30) business days of entry of judgment to the sending state Compact Administrator who shall then send it to the receiving state Compact Administrator.

10. **Notification if child placed in violation of Article III:** A child placed into the receiving state prior to a decision for placement constitutes a violation of Article III and the laws respecting the placement of children of both states; subject to liability cited in Article IV. Penalty for Illegal Placement. All parties to the placement arrangements, including prospective resource parents, the sending agency, private licensed child-placing agency or legal counsel are responsible for notifying the appropriate ICPC authorities in both states of the circumstances and to coordinate action to provide for the safety and well-being of the child pending further action. If a child has been placed in the receiving state in violation of Article III, a Form 100B indicating the date the child was placed in the prospective adoptive home, together with items listed in Section 6 above, shall then be filed with the sending state Compact Administrator who shall forward them to the receiving state's Compact Administrator. If all required documents are provided, the sending state and the receiving state shall give due and appropriate consideration to placement as permitted under the sending and receiving state laws.

11. This regulation is adopted pursuant to Article VII of the Interstate Compact on the Placement of Children by action of the Association of Administrators of the Interstate Compact on the Placement of Children at its annual meeting May 4 through 7, 2012; such adoption was approved on May 6, 2012 and is effective as of October 1, 2012.