



National Clearinghouse on Child Abuse and Neglect Information National Adoption Information Clearinghouse



Gateways to Information: Protecting Children and Strengthening Families

State Statutes Series 2004

Use of Advertising and Facilitators in Adoptive Placements

Making Adoptive Placements

All States permit the placement of children for adoption by agencies, either publicly sponsored agencies, such as a department of the State government, or private child-placing agencies that have been licensed by the State. These placements are known as agency adoptions. Many people choose to adopt without the involvement of an agency; these placements are known as private placements or independent adoptions. Private placement is often preferred by people who want to adopt newborn infants or want to avoid the often years-long waiting lists of agency adoptions.

The challenge for prospective adoptive parents in a private placement is locating a child who is appropriate for their family or finding birth parents willing to place their child for adoption. Some parents choose to advertise their interest in adopting, while others may choose to utilize the services of adoption facilitators or intermediaries. In an effort to protect the interests of all parties, many States have enacted laws that either prohibit or regulate these means of making private adoptive placements.

Use of Advertising

Advertising is defined as the publication in any public medium, either print or electronic, of either an interest in adopting a child or the availability of a specific child for adoption. This can include newspapers, radio, television, the Internet, billboards, or print flyers. Approximately¹ 26 States currently have enacted statutes that in some way limit or regulate the use of advertising in adoptive placement.

States That Permit Adoption Advertising. Connecticut specifically allows advertising by birth parents and prospective adoptive parents. An additional eight States allow advertisement by agencies and other entities such as attorneys (in Florida), crisis pregnancy centers (Louisiana), birth parents (Nebraska), facilitators (North Carolina), and prospective adoptive parents who have favorable preplacement assessments (North Carolina, Oklahoma, Oregon, Washington, and Wisconsin). Georgia allows the use of public advertising by agencies only; individuals such as birth parents and prospective adoptive parents may exchange information by private means only, such as letters or phone calls.

¹ The word *approximately* is used to stress the fact that the States frequently amend their laws, so this information is current only through April 2004.



Use of Facilitators or Intermediaries

States That Prohibit Adoption Advertising. Two States (Alabama and Kentucky) prohibit any use of advertising by any person or entity. Another 12 States² prohibit advertising by anyone other than the State department or a licensed agency. Utah specifically prohibits advertising by attorneys, physicians, or other persons. In Virginia, no person or agency may advertise to perform any adoption-related activity that is prohibited by State law,³ and a physician, attorney, or clergyman may not advertise that he or she is available to make recommendations for adoptive placement, as that is also an activity that is prohibited by law.

In an independent or private placement adoption, a person or organization will often act as an intermediary (or facilitator) to match up or bring together a prospective adoptive parent with a birth mother wishing to place her child. An intermediary or adoption facilitator is any person or entity that is not an approved or licensed agency that acts on behalf of any birth parent or prospective adoptive parent in connection with the placement of the child for adoption. In an effort to ensure that no person, either the intermediary or a member of the birth family, profits from the placement of a child, many States have enacted statutes that regulate the use of intermediaries or facilitators.

States That Prohibit the Use of Facilitators. Approximately two States (Delaware and Kansas) strictly prohibit any use of facilitators or intermediaries. Five States prohibit their use by restricting the placement of children to licensed agencies only (in Georgia, Montana, Nevada, New Mexico, and Oregon). Kentucky, Massachusetts, Minnesota, Nebraska, and the District of Columbia restrict the placement of children to either an agency or a member of the child's birth family. Ohio and Oklahoma limit placements to an agency, family member, or attorney.

States That Regulate the Activities of Facilitators. Twelve States⁴ regulate the activities of intermediaries by limiting the compensation that they can receive. It is illegal for these entities to receive any payment for the placement of the child; reimbursement for actual medical or legal services is the only payment that they can receive. In New York, facilitators can be used only for intercountry adoptions; all other adoptive placements must be made through a licensed agency. Eight States⁵ allow the use of adoption facilitators, but detail in statute the activities they are permitted or the services they are required to offer. These requirements may include:

- Providing written information about the adoption process to all parties (in California, Florida, Michigan, and Washington)
- Providing to the adopting parent any available background information about the child's birth parent (in California, Michigan, and Pennsylvania)
- Making sure that the adopting parents have completed favorable home studies (in New Jersey and Pennsylvania)
- Reporting to the court all fees and expenses paid (in California, Florida, and Pennsylvania)

² California, Delaware, Idaho, Kansas, Maine, Massachusetts, Montana, Nevada, New Hampshire, North Dakota, Ohio, and Texas.

³ Virginia law prohibits payment for making an adoptive placement, except for compensation for specific services such as agency fees, medical or legal expenses, or other reasonable expenses connected with the adoption process.

⁴ Alabama, Colorado, Louisiana, Maryland, Missouri, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, and West Virginia.

⁵ California, Florida, Michigan, New Jersey, North Carolina, Pennsylvania, Vermont, and Washington.

In Florida, where adoption facilitators are frequently attorneys, the law requires the facilitator to obtain all necessary consents, file petitions and affidavits, and serve notices of hearings. In North Carolina and Vermont, the law explicitly states that a parent or guardian must personally select a prospective adoptive parent, and the role of a facilitator is limited to either assisting the birth parent in evaluating that choice or assisting a prospective adoptive parent in locating a child who is available for adoption.

This publication is a product of the State Statutes Series prepared by the National Adoption Information Clearinghouse (NAIC). While every attempt has been made to be as complete as possible, additional information on these topics may be in other sections of a State's code as well as agency regulations, case law, and informal practices and procedures.

Electronic copies of this publication may be downloaded from the Clearinghouse website at <http://naic.acf.hhs.gov/general/legal/statutes/advertising.cfm>

- To find statute information for a particular State, go to <http://naic.acf.hhs.gov/general/legal/statutes/search> and select the specific State and topic.
- To find information on all of the States and territories, view the complete PDF at <http://naic.acf.hhs.gov/general/legal/statutes/advertisingall.pdf> or call the Clearinghouse at (888) 251-0075 or (703) 352-3488 to order a copy.