

**MINIMUM STANDARDS
FOR
CHILD-PLACING AGENCIES**

**Principles
Regulations
Procedures**

**Prescribed by
STATE OF ALABAMA
DEPARTMENT OF HUMAN RESOURCES
An Affirmative Action Equal Opportunity Employer**

Developed 1974

Revised 1977, 1980, 1982, 1989, & 2002

FOREWORD

Minimum Standards for Child-Placing Agencies has been revised in accordance with the Child Care Act of 1971 (Title 38, Chapter 7, Code of Alabama 1975).

Although child-placing agencies were licensed prior to 1944, it was not until September of that year that standards applicable only to child-placing agencies were prescribed by the State Board of Public Welfare (now the State Board of Human Resources) as formulated by the Committee on Standards of the Alabama Conference of Child-Caring Institutions and Agencies and the State Department of Human Resources.

In revising the minimum standards in 1974, the State Department of Human Resources utilized the resources of the Department and sought the advice and assistance of knowledgeable persons representative of the field of child care and of child-placing agencies. The revised standards were reviewed and endorsed by the Advisory Committee on Licensing Standards for Child Care Facilities. The standards are to be used as a guide in the development of new agencies and as a means to guarantee desirable child care practices in existing agencies.

Section III, "Regulations," sets out the minimum standards which must be met by the person responsible for the care of children and by the child care facility in order for a license to be issued by the Department. The regulations are in line with local and national trends, and they are to ensure the rights, well-being, and best interests of minor children of the State who require unrelated, substitute care.

The standards, reviewed and agreed upon by the Advisory Committee on September 24, 1973, and adopted by the State Board on September 13, 1974, were revised in 1977 and approved by the State Board in October 1977. The 1980 and 1988 revisions were approved by the Advisory Committee on Licensing Standards for Child Care Facilities and the State Board of Human Resources.

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ADDENDUM

FORMS

I. PRINCIPLES OF CHILD-PLACING AGENCIES

The following principles are meant to be guidelines to assure sound child welfare services and are not meant to be regulatory in nature.

Every child has certain basic rights, including, but not limited to, the following:

1. The right to maintenance, including food, clothing, and shelter.
2. The right to protection, to be free from fear, injury, neglect, and abuse.
3. The right to emotional security, to be afforded the right to be an individual, and to develop in accordance with his/her basic capacities, preferences, and propensities; to become increasingly independent and self-directed.
4. The right to an education, or whatever preparation is attainable by the child for making a living and learning to live in society as an adult.
5. The right to diagnosis and treatment of any medical condition, encompassing both physical medicine and treatment of psychological problems.
6. The right to be with his/her family, usually the child's parents. If the child is unable to be with family, the right to frequent contact (telephone and mail) and visitation. Furthermore, the right to be, and to be perceived as, the child of persons who are respected as persons irrespective of their problems or inadequacies.
7. The right to continue and/or sustain relationships with non-family members who have been or are currently significant to the child.
8. The right to his/her constitutional safeguards, such as due process, representation by counsel, etc.
9. The right to inherit from his/her parents and siblings as provided by law.

These rights are usually guaranteed the child through relationships within the child's family. The chief goal of a child-placing agency should be to support the family unit and to exert every possible effort to preserve the family intact. However, some families are so beset by problems that protection and minimal nurture of the child require that alternate living arrangements be made for the child.

The child-placing agency has the responsibility of working with the child's family and the child, to strengthen the family so that the child may remain at home, or, failing that, to arrive at consensus that placement is the appropriate alternative.

A court order for placement may preclude a consensus among child, family, and child-placing agency. In such cases, the child-placing agency has a responsibility to understand the psychodynamics involved in the family's perception and reception of the court's action, and must work with the family and the child to assist them in "working through" their feelings to the point that success of the placement of the child will not be jeopardized by unresolved feelings, either of parent or of child.

The usual alternatives to living with the birth family are adoption, foster family care, group home, or institution. Each of these alternatives has unique strengths that must be assessed with care for the specific child and family involved. Appropriate alternatives are those that are least restrictive, most normalized and meet the social and emotional needs of the child.

The child-placing agency has the responsibility of ensuring that the child's educational needs are being met. This includes working with the school system, the child's family, the child and other stakeholders to ensure that the child is in the proper school setting and is receiving the appropriate services necessary for the child to experience success in school.

The principle of any type of care (except adoption) alternative to parental or family care is that of "supplemental parenting." That is, the foster family home, group home, or institution provides only that portion of childcare and nurture that cannot be provided by the natural parents or family of the child. Whatever emotional, physical, or financial support the family can give will be used as a starting point, and where the family leaves off, the child care agency begins. Any positive participation of the family, irrespective of its nature or amount, will be of inestimable value to the child and to the agency that works with the child.

The child-placing agency has the responsibility to ensure that, concurrently with the placement of the child, and continuing during the entire placement of the child, the family will have continuing support, contact, and involvement with the child and the agency or other facility where the child resides.

Parents have certain rights with respect to their children, most of which are not abrogated by placement, barring a court order to that effect. These rights include, but are not limited to, the following:

1. The right to consent to medical services or surgery.
2. The right to consent to the marriage of a child who is below the statutory age limit for marrying without parental consent.
3. The right to consent to military service with respect to a child who is below the age where he/she can sign for himself/herself.
4. The right to determine the religious training of the child.
5. The right to receive proper legal notice of any action which is instituted on behalf of, or against, the child.
6. The right of access to the child, the right to visit.
7. The right to inherit from the child as provided by law.
8. The right to consent to the adoption of a child.

The child-placing agency must ensure that the rights of both child and parents are preserved, and that the staff of any placement resource considered are properly apprised of these rights.

The ultimate goal of temporary placement should be the reestablishment of the family unit. In all cases, a goal shall be the facilitation of the child's efforts to find a personal and family identity for himself/herself, the development of increasing self-reliance and maturity, and, from the beginning of adolescence, a growing sense, joy, and confidence in self-direction.

The child-placing agency has the responsibility to interpret to the public the nature of placement needs, and to stimulate the development of placement resources in increasing quantity and quality, arranged along with a wide spectrum of services to children and their families.

II. LEGAL AUTHORITY

A. **Child Care Act of 1971 – Title 38, Chapter 7, Code of Alabama 1975, (Acts 1971, 3rd Ex. Sess. No. 174, p. 4423, § 1-17.)**

[The excerpts below are for the reader's convenience. See Addendum for the law printed in its entirety.]

§ 38-7-3. License to operate or conduct child-care facility—Required.

No person, group of persons or corporations may operate or conduct any facility for child care ... without being licensed or approved....

§ 38-7-4. Same—Application; investigation, application to operate foster family home may be made to licensed child-placing agency.

Any person, group of persons or corporation who or which receives children or arranges for care or placement of one or more children unrelated to the operator shall apply for a license or approval. ... Application for such license or approval to operate a child care facility shall be made to be Department in the manner and on forms prescribed by it. The Department, upon receiving such application, shall examine the premises of the child care facility, including buildings, equipment, furnishings, and appliances thereof and shall investigate the persons responsible for the care of children therein. If, upon such examination of the facility and investigation of the persons responsible for care of children, the Department is satisfied that the facility and responsible persons reasonably meet standards prescribed ... the Department shall issue a license or an approval ... designating on said license or approval the type of child care facility ... and the number of children to be served at any one time. ... Application to operate a foster family home may be made to a licensed child-placing agency ... and such licensed child-placing agency may examine said foster family home and investigate persons therein ... and upon being reasonably satisfied that the foster family home and the responsible persons reasonably meet standards prescribed by the Department, said licensed child-placing agency may issue an approval to said foster family home.

§ 38-7-7. Same—Department to establish minimum standards....

- (a) The Department shall prescribe and publish minimum standards for licensing and for approving all child care facilities as defined.... In establishing such standards the Department shall seek the advice and assistance of persons representative of the various types of child care facilities.

B. **Definitions**

- (1) ADULT. Any person 19 years of age or older.
- (2) CAREGIVER. A person providing care and guidance of children in the home.
- (3) CHARACTER AND SUITABILITY. The person maintains business/professional family and community relationships that are characterized by honesty, fairness, truthfulness, and concern for the well-being of others to the extent that the

person is considered suitable to be entrusted with the care, guidance and protection of children.

- (4) CHILD. Any person under 19 years of age.
- (5) CHILD-CARE FACILITY or FACILITIES FOR CHILD CARE. A child-care facility where more than 10 children are received and maintained for the purpose of providing them with care or training or both, but does not include:
 - a. Any facility for child care which is under the ownership or control, or both, of the state of Alabama, or which is operated or certified or licensed by another agency or department of the state of Alabama;
 - b. Any juvenile detention home established and operated by the state of Alabama;
 - c. Any bona fide boarding school in which children are primarily taught branches of education corresponding to those taught in public schools, grades 1 through 12, or taught in public elementary schools, high school or both elementary and high schools.
- (6) CHILD-PLACING AGENCY. A public or private child-care facility which receives any child or children for the purpose of placing or arranging for the placement of the child or children in foster family homes or other facilities for child care apart from the custody of the child's or children's parents. The term "child-placing agency" includes, but is not limited to, all agencies established and maintained by a municipality or other political subdivision of the state of Alabama to protect, guard, train or care for children outside their own home, but does not include any circuit court or juvenile court or any duly appointed juvenile probation officer or youth counselor of the court who receives and places children under an order of the court.
- (7) COMMISSIONER. The Commissioner of the State Department of Human Resources.
- (8) DEPARTMENT. The Department of Human Resources of the State of Alabama.
- (9) FOSTER FAMILY HOME. A child-care facility in a residence of a family where the family receives a child or children, unrelated to said family, for the purpose of providing family care and training on a full-time basis. The types of foster family homes are defined as follows:
 - (a) BOARDING HOME. A foster family home wherein the foster family receives a child or children and receives payment for their care; provided, however, that the number of children so received shall not exceed six, unless said children are of common parentage.
 - (b) FREE HOME. A foster home which does not receive payment for the care of a child or children and which may or may not receive the child or children for the purpose of adoption.

- (10) **GROUP HOME.** A child-care facility where at least seven but not more than 10 children are received and maintained for the purpose of providing them with care or training or both.
- (11) **LICENSEE.** A person, group of persons, or corporation, to whom a license, approval or permit is issued.
- (12) **RELATED.** Any of the following relationships by blood, marriage, or adoption: parent, grandparent, brother, sister, stepparent, stepbrother, stepsister, half-brother, half-sister, uncle or aunt, and their spouses.

III. REGULATIONS

A. Administration

1. Board of Directors

Where a Board exists, the Board shall perform the following functions:

a. The Board and the Department

- (1) The board shall consult with the Department prior to establishing a new child-placing agency, changing the purpose, goals and function of the basic program, or extending services into additional program or geographic areas.
- (2) The board shall notify the Department when there is a change of the executive and/or the chief officer of the board.
- (3) The board shall provide financial information to the Department (see section 1. c.).

b. Board Responsibilities

- (1) The board shall articulate the purpose, goal, and function of the child-placing agency.
- (2) The board shall establish written by-laws governing the organization, duties and operation of the board.
- (3) The board shall establish written operating policies concerning organizational structure, personnel practices, and policies of serving children and their families.
- (4) The board shall provide a plan for regular review and updating of goals, policies, purposes and procedures of the child-placing agency.
- (5) The board shall acquaint its members with specific requirements of minimum standards, and familiarize itself with, and promote, progressive philosophies of child care, and shall seek constantly to provide a professionally sound program for children.

- (6) The board shall employ a qualified executive, and delegate to him/her the responsibility for administration of the child-placing agency.

c. The Board and Financing

- (1) The board shall be responsible for providing operating and capital funds. Financial policies and practices shall be in accordance with sound budgeting, disbursement, and audit procedures.
- (2) The board shall provide evidence that sufficient funds are available to equal twenty-five percent (25%) of the projected operating budget for the first full year of operation and annually thereafter.
 - (a) If the agency charges a fee for adoption services, the executive board shall establish a fee policy and publish it in the agency's operating policy. Such information shall be provided to individuals and families who are considering using the agency's services.
 - (b) The board shall assure that voluntary contributions are not accepted nor solicited from adoptive parents during the placement process and prior to the final order of adoption.
- (3) The board shall approve the annual budget, and revisions, if any, to the annual budget, in advance of the applicable fiscal period.
- (4) The board shall provide for proper bonding of board officers and agency employees who handle operating or capital funds.
- (5) The board shall provide for an opinion audit on an annual basis by a certified public accountant not on the staff of the child-placing agency or a member of the board.
- (6) The board shall provide a copy of the audit to the Department, which the chief officer of the board certifies has been presented to the board as a whole. Child-placing agencies operated by a governmental agency shall provide a copy of the annual report of the appropriate fiscal examining authority.

2. The Executive in the Absence of a Board of Directors

The executive in charge of administration, where a Board of Directors does not exist, shall perform the following functions:

a. The Executive and the Department

- (1) The executive shall consult with the Department prior to establishing a new child-placing agency, changing the purpose, goals and function of the basic program, or extending services into additional program or geographic areas.
- (2) The executive or the person assuming executive responsibilities shall notify the Department in advance when there is to be a change of the executive.

- (3) The executive shall provide financial information to the Department (see section 2.c.).
- b. Executive Responsibilities
- (1) The executive shall articulate the purpose, goal, and function of the agency.
 - (2) The executive shall establish written operating policies concerning organizational structure, personnel practices, policies of intake, care, services, and discharge of children.
 - (3) The executive shall provide a plan for regular review and updating of goals, policies, purpose, and procedures of the child-placing agency.
- c. The Executive and Financing
- (1) The executive shall be responsible for providing operating and capital funds. Financial policies and practices shall be in accordance with sound budgeting, disbursement, and auditing procedures.
 - (2) The executive shall provide evidence that sufficient funds are available to equal twenty-five percent (25%) of the projected operating budget for the first full year of operation and annually thereafter.
 - (a) If the agency charges a fee, the executive shall establish a fee policy and publish it in the agency's operating policy. Such information shall be provided to individuals and families who are considering using the agency's services.
 - (b) The executive shall assure that voluntary contributions are not accepted nor solicited from adoptive parents during the placement process and prior to the final order of adoption.
 - (3) The executive shall prepare the annual budget in advance of the applicable fiscal period.
 - (4) The executive shall provide for proper bonding of agency employees who handle operating or capital funds of the child-placing agency.
 - (5) The executive shall provide for an opinion audit on an annual basis by a certified public accountant not on the staff of the child-placing agency. Such audit shall review the agency's operations to determine if the agency's accounting policies and practices are consistent with standard accounting principles.
 - (6) The executive shall provide a copy of the audit to the Department. Child-placing agencies operated by a governmental agency shall provide a copy of the annual report of the appropriate fiscal examining authority.

3. Administrative Regulations

- a. A child-placing agency which provides a full range of services, including, but not limited to, adoption, foster family homes, counseling services, or financial aid, shall maintain an office with a resident executive and staff within the state of Alabama.
 - (1) An out-of-state child-placing agency shall adhere to all applicable terms of the Interstate Compact on the Placement of Children (ICPC).
 - (2) An out-of-state agency placing a child in Alabama shall have an Alabama licensed child-placing agency or private independent practitioner to do the adoption home study, provide post-placement supervision and make reports to the Court.
- b. The child-placing agency shall have a manual of operating policies and procedures regarding its services. The written policies and procedures shall include (where applicable), but need not be limited to, regulations pertaining to:
 - (1) Services to unmarried parents;
 - (2) Procedures for termination of parental rights;
 - (3) Adoption applications and adoption procedures;
 - (4) Fees for services, including fees for counseling during pregnancy period, fees for adoptive applicants, and fees for record research for adult adoptees if such fees are charged by the agency;
 - (5) Foster Family Home applications and approval procedures;
 - (6) Procedures for obtaining temporary custody;
 - (7) Foster care: medical and dental care, allowances, visitation, boarding foster family home payments, etc.;
 - (8) Interstate and international placement of children;
 - (9) Procedures for granting an application that will allow for the approval of an application notwithstanding the fact that a household member has a criminal conviction as set out in Section III E. 4. a. (1).
- c. Each social work supervisor and each social worker shall be provided with a copy of the manual of operating policies and procedures and a copy of said manual shall be provided to the Department.
- d. Written personnel practices and policies developed by the board (or, in the absence of a board, by the executive) shall be on file in the child-placing agency and with the Department. A copy of personnel practices and policies shall be made available to each employee.

- e. Administrative files shall include, but are not limited to, the following:
- (1) Job description for all positions, which shall be reviewed annually by the board and the executive.
 - (2) Policies regulating salaries, fringe benefits, working hours, sick leave, vacations, holidays, retirement and terminations.
 - (3) A file shall be established for the executive, for each employee, and for each volunteer who individually has direct contact with children. The files shall include at least the following:
 - (a) The application for employment
 - (b) Information regarding the character and suitability of the person to work with children inclusive of:
 - (i) Recording of impressions gained through interviews with the individual to be employed, particularly his/her attitudes regarding child care.
 - (ii) A written record shall be made concerning any oral reference contacts and such record shall be filed in the applicant/employee record.
 - (iii) Reference contacts: statements from three unrelated references, including at least one previous employer, if previously employed. A written record shall be made concerning any oral reference contacts and such record shall be filed in the applicant/employee's record.
 - (c) Medical Records Requirements
 - (i) Medical examination reports are required, (which shall be kept apart from general personnel files) as a separate, confidential medical record, available only under limited conditions specified under ADA/Section 504. All staff shall have verification of a medical examination as specified below.
 - (ii) Complete an initial physical examination performed by a licensed practicing medical doctor, a physician's assistant (as defined in Section 34-24-290 (2), Code of Alabama 1975) or certified family nurse practitioner within six months prior to an employee starting employment OR within thirty (30) days of employment. A record of the examination shall be on file with the Department or licensed child-placing agency. A DHR-2092, Medical Report for Out of Home Care Provider for Children revised 05/01 (see copy in the Appendix), shall be completed, including the tests specified, and a copy placed in the provider's file.

(iii) Every two years from the initial examination (earlier if concerns regarding the mental, physical or emotional health of the employee arise) each employee shall have:

I A complete physical examination as specified in (I) above, excluding any test not required as often as two years.

II A statement from a licensed practicing medical doctor, a physician's assistant (as defined in Section 34-24-290 (2), Code of Alabama 1975) or certified family nurse practitioner which attests to the employee's freedom from contagious and infectious diseases and his/her physical fitness to care for children or to perform services in a child-placing agency.

III Seek appropriate professional consultation and treatment, if prescribed, when there is indication of a physical, emotional, or mental condition that could be detrimental to the children's care. Said person shall not give care to children until the condition is corrected to the satisfaction of the examining licensed practicing physician and the approving agency.

IV A record of such examination(s) or physician's statement shall be on file at the child-placing agency as a separate confidential medical record.

(d) Annual Evaluations

(e) Any report of misconduct or dereliction of duty shall be handled in accordance with the agency's personnel policies and practices, and a full report of the circumstances, the inquiry, procedures followed, and the disposition made shall be recorded. Any report of violation of child placement laws in Alabama or other states shall be investigated by the Department.

f. All employees of the child-placing agency shall meet the specific qualifications for their particular jobs, as stated in the job description.

g. All employees must complete a Criminal History Check and it must have been submitted to the ABI and FBI and clearance given, in the form of a suitability letter. If a previous criminal history check is older than November 2000 a new criminal history check shall be required before a suitability letter will be issued. (See section on Character and Suitability)

- h. All employees must be cleared through the State Central Registry for Child Abuse/Neglect. (See section on Character and Suitability)
 - i. Any staff member shall report to the County Department and to the State Department's Family and Children's Services any knowledge or suspicion of harm or threatened harm to a child's health or welfare through non-accidental physical or mental injury, sexual abuse, or attempted sexual abuse; negligent treatment or maltreatment of a child, including failure to provide adequate food, medical treatment, clothing or shelter. Such report shall be made immediately by telephone or direct oral communication followed by a written report as required under penalty by § 26-14-1 through § 26-14-13, Code of Alabama 1975. The written report shall be made on DHR-DFC-1593, Report of Suspected Case of Child Abuse/Neglect. (See Appendix for a copy of this form.)
 - j. The child-placing agency shall submit any reports regarding the care of children or the operation of the agency as required. The Monthly Report of Children under Care or Supervision (BFC-611) shall be submitted to the Department no later than the fifth day of the month following the month for which the report is made. (See the Appendix for a copy of this form.)
 - k. The child-placing agency shall submit to the Department any other reports regarding the care of children or the operation of the facility.
4. Administrative Staff
- a. The Executive
 - (1) The executive shall have a master's degree in the field of social work, psychology, education, administration, or a related field, plus five years experience in family and children's services with progressively responsible duties in supervision and/or administration.
 - (2) The duties of the executive shall include, but are not limited to, the following:
 - (a) Direct and evaluate a program of child-placing which is child and family-centered, which is within the limits of function and policy established by the board, or by the executive where there is no board, and which is based upon sound professional concepts.
 - (b) Organize the work of the agency and delegate responsibility to various staff members as appropriate.
 - (c) Make regular reports to the board, where applicable, on all aspects of the operation of the agency and its program.

- (d) Handle expenditures according to allocations in the budget, and develop the annual budget in conjunction with the board, where applicable.
- (e) Develop a plan for orientation, training, and development of staff.
- (f) Appoint, evaluate, and terminate staff.
- (g) Make provision for continuity of administrative authority in his/her own absence.
- (h) Develop a program of public relations, including interpretation to the community.
- (i) Notify the State Department in the event of an incident that is considered to jeopardize the life of a child, staff member, or other person.
- (j) Make regular reports to the Department in accordance with requirements by the Department.

b. Social Workers

There shall be a supervisor of social services, in addition to the executive, if there are more than the equivalent of two full-time social workers (full-time as defined according to the agency's personnel policies) or if the executive director does not have a master's degree in social work from a school of social work accredited by the Council on Social Work Education plus five years experience in child-placing.

Social workers shall be licensed and shall practice social work pursuant to Code of Alabama 1975, § 34-30-1 through § 34-30-58.

- (1) A supervisor of social services shall be licensed as a graduate social worker or a certified social worker, and shall have a minimum of two years full-time paid employment in family and children's services, including experience in child placing.
- (2) A social worker shall have at least the following qualifications:
 - (a) A license as a graduate social worker; or
 - (b) A license as a certified social worker; or
 - (c) A license as a bachelor social worker with continuing supervision from a person so licensed as specified in (a) or (b) above.

c. Clerical Staff

- (1) Staff shall be selected on the basis of personal and technical qualifications and job descriptions.
- (2) A sufficient number of managerial and support workers shall be employed to carry out business, secretarial and clerical duties, such as maintenance of records, correspondence, fiscal matters,

and bookkeeping so that the services of the agency can be carried out.

d. Other Professional Staff

All other professional staff employed by the child-placing agency shall be qualified and/or licensed in their professional fields as required by state law.

e. Ancillary Staff

When the child-placing agency provides the professional services offered by physicians, dentists, psychiatrists, psychologists, teachers and other specialists on a fee basis, these specialists shall be qualified and/or licensed in their respective fields.

f. Volunteers

- (1) If the child-placing agency uses volunteers, it shall:
 - (a) Develop a plan for their orientation, training and use.
 - (b) Develop job descriptions and specify responsibilities of volunteers.
 - (c) Designate a staff member to supervise and evaluate volunteers.
- (2) Volunteers shall not be expected to assume the total responsibilities of any paid staff member.
- (3) Records shall be kept on the hours and activities of volunteers.

5. Staff Development. This covers any staff that will have direct responsibility for the care of children.

a. Orientation

- (1) New staff shall receive orientation within 30 days of employment. Orientation will cover:
 - (a) Agency philosophy, policies and procedures
 - (b) Generally accepted principles of child care and behavior management practices
 - (c) Overview of the Child Care Institution, Group Homes and Child-Placing Agencies
 - (d) Confidentiality issues
- (2) The documentation shall include the name of the person responsible for conducting the orientation and the date and content of the orientation. Completion of orientation shall be documented in the employee's file.

b. New Hire Training

- (1) Training consisting of a minimum of thirty (30) hours of actual training time will be given within the first one hundred eighty (180) days of hire.
- (2) The training shall consist of the following components:
 - (a) Child Development
 - (b) Behavior Management
 - (c) The Process of Grief and Loss
 - (d) The Dynamics of Attachment and Separation
 - (e) The Value of Families
 - (f) Individualized Service Plans*
 - (g) Identifying the Strengths and needs of Families and Children
 - (h) Behavior as an Expression of Underlying Needs
 - (i) The Value of Partnerships
 - (j) How Children Enter the Foster Care System
 - (k) *Overview of the R.C. Consent Decree
 - (l) Understanding and Valuing Cultural Differences

*Exemptions of these components are allowed for agencies not accepting DHR children into placement.

c. Continuing Education

- (1) After the first anniversary of employment, a program of in-service training will provide staff with a minimum of fifteen (15) hours in-service training annually. Participation at conferences and workshops may be included as part of the 15 hours as documented by attendance certificates.
- (2) Training may include, but is not limited to:
 - (a) Child Safety Issues
 - (b) Crisis Intervention/Engaging Families
 - (c) The Impact of the Media on Children*
 - (d) Effects of Multiple Placements
 - (e) Cultural Sensitivity and Responsive Services
 - (f) Significance of Birth Families
 - (g) Substance Abuse
 - (h) Gang Activities
 - (i) Universal Precautions and Infection Control

*In cases where DHR holds custody of the child, the social worker with the CPA will contact the DHR social worker to inquire if media involvement may be appropriate.

B. Character and Suitability

1. Applicants/licensees (see II Legal Authority, Section B, Definitions, Page 6), caregivers (see II Legal Authority, Section B, Definitions, Page 6), substitutes, domestic workers, volunteers, or other persons who have contact with the children in care or unsupervised access to the children in care shall be of good moral character. The Department at the time of the initial application for a license shall review information regarding the character and suitability of applicants for a license. Subsequent character and suitability reviews shall be conducted at the discretion of the Department. Evidence that an applicant/licensee, caregiver, substitute, domestic worker, volunteer, or other person who has contact with the children or unsupervised access to the children, is of unsuitable character may be the basis for the denial of an initial application, denial of an application for renewal of a license, suspension of a license/permit, or revocation of a license or six-month permit.
2. The applicant/licensee shall conduct a character and suitability review, as set forth below, of substitutes, caregivers, domestic workers, volunteers, and other persons who have contact with the children or unsupervised access to the children.
3. Factors to be considered in determining character and suitability shall include, but need not be limited to:
 - a. References
 - (1) At the time of initial application, each applicant for a license shall provide the Department with the names, addresses, and telephone numbers of at least three persons who are unrelated to the applicant or household member by blood, marriage, or adoption. These persons shall be contacted by the Department to determine the applicant character, community reputation, work history, and suitability to care for children or to have contact with children. The Department may, at its discretion, contact additional sources who can attest to the applicant/household member's character and suitability to care for children or to have contact with children.
 - (2) The applicant/licensee shall obtain at least three written references for each current and prospective caregiver, substitute, domestic worker, volunteer, or other person who has contact with the children or unsupervised access to the children. References shall attest to the person's character, community reputation, work history, suitability to care for children or to have contact with the children. Reference contacts shall not be related to the person by blood, marriage, or adoption. Written references shall be kept on file at the child-placing agency office.)

- b. Clearance of State Central Registry on Child Abuse/Neglect
 - (1) At the time of initial application, a completed REQUEST FOR CLEARANCE OF STATE CENTRAL REGISTRY ON CHILD ABUSE/NEGLECT (DHR-DFC-1598) shall be submitted by the applicant. Results shall be kept in the Department's files.
 - (2) The applicant shall obtain a completed REQUEST FOR CLEARANCE OF STATE CENTRAL REGISTRY ON CHILD ABUSE/NEGLECT (DHR-DFC-1598) for each caregiver, substitute, volunteer, domestic worker, and any other person who has contact with the children or unsupervised access to the children. Completed forms shall be submitted to the Department. Results shall be kept on file in the approval agency's office.
 - (3) A subsequent REQUEST FOR CLEARANCE OF STATE CENTRAL REGISTRY ON CHILD ABUSE/NEGLECT (DHR-DFC-1598) may be requested by the Department at any time.
- c. Criminal History Background Information Checks
 - (1) In accordance with Alabama law, (Act 2000-775, effective November 1, 2000, see Appendix M, page 118), for a copy of the law), the criminal history of each applicant for a license, each licensee, substitute, caregiver, volunteer, and domestic worker, as well as any other person who has contact with the children or unsupervised access to the children shall be reviewed.
 - (2) Each licensee, substitute, caregiver, volunteer, domestic worker, as well as any other person who has contact with the children or unsupervised access to the children, licensed, employed, or performing volunteer services prior to November 1, 2000, shall submit, to the Alabama Bureau of Investigation, Department of Public Safety, as instructed by the Department, a request for a criminal history background information check accompanied by the following:
 - (a) Fingerprints, properly executed by a law enforcement agency or an individual properly trained in fingerprinting techniques.
 - (b) Written consent from the licensee, substitute, caregiver, volunteer, domestic worker, as well as any other person who has contact with the children or unsupervised access to the children, for the release of the criminal history background information to the Department of Human Resources. A copy shall be submitted to the Department of Human Resources Criminal History Checks Unit. A copy shall be kept on file in the approving agency's office.

- (c) The required fee, unless fee is to be paid by the Department.
 - (d) Identification verification of name, date of birth, race, sex, and Social Security number in the form of a photo identification from any governmental agency, such as a driver's license, non-driver's identification, or program participation card. A copy of the identification verification shall be kept on file in the DHR county office of the child-placing agency.
- (3) At the time of initial application, an applicant for a license shall submit, to the Alabama Bureau of Investigation, Department of Public Safety, a request for a criminal history background information check accompanied by the following:
- (a) **MANDATORY CRIMINAL HISTORY CHECK NOTICE:**
(See Appendix B., page 75, for copy of form)
Alabama law requires that a criminal history background information check be conducted on all persons who hold a license or work in a Department of Human Resources licensed child care or adult care facility, a foster or adoptive home approved by the Department of Human Resources, or a licensed child-placing agency, including all officers and agents of the entity. You are required to provide full, complete, and accurate information on your criminal conviction history upon application for a license or employment (whether paid or unpaid, including volunteers). This information shall be used to determine your suitability to provide care to children, the elderly, or disabled individuals. Unless a criminal history background information check report and suitability determination have previously been obtained, you must complete a written request and consent for a criminal history background information check with fingerprints at the time of application for employment. Refusal to complete these documents or providing false information shall result in refusal of employment, approval, or licensure. The term conviction includes a determination of guilt by a trial, by a plea of guilty, or a plea of nolo contendere. You are required to notify your employer, licensing agency, or entity where you are performing volunteer work of any criminal conviction occurring subsequent to the date of completion of this notice. Any individual determined to have submitted false information shall be referred to the district attorney or law enforcement for investigation and possible prosecution. An individual who intentionally falsifies or provides any misleading information on the statement is guilty of a Class A misdemeanor, punishable by a fine of not more than two thousand dollars (\$2,000) and imprisonment for not more than one year. Convictions for

any crimes listed in Section (4), shall make an individual unsuitable for licensure, employment, or volunteer work.

- (b) The Mandatory Criminal History Check Notice shall include the following criminal history statement:
 - (i) Have you ever had a suitability determination made by the Department of Human Resources in connection with a previous criminal history information background check? Yes () No ().
 - (ii) Have you ever been convicted of a crime? Yes () No (). If yes, state the date, crime, location, punishment imposed, and whether the victim was a child or an elderly or disabled individual.
 - (c) A signed statement, which includes the mandatory statement above, indicating whether he or she has ever been convicted of a crime, and if so, fully disclosing all convictions. The mandatory statement shall be submitted to the Department of Human Resources Criminal History Checks Unit. A copy shall be kept on file in the approving agency's office.
 - (d) Two complete sets of fingerprints, properly executed by a law enforcement agency or an individual properly trained in fingerprinting techniques.
 - (e) Written consent from the applicant for the release of the criminal history background information to the Department of Human Resources. A copy shall be submitted to the Department of Human Resources Criminal History Checks Unit. A copy shall be kept on file in the approving agency's office.
 - (f) The required fee.
 - (g) Identification verification of name, date of birth, race, sex, and Social Security number in the form of a photo identification from any governmental agency, such as a driver's license, non-driver's identification, or program participation card. A copy of the identification verification shall be kept on file in the approving agency's office.
- (4) Each, substitute, caregiver, and domestic worker, volunteer, and any other person who has contact with the children or unsupervised access to the children, initially employed, or performing volunteer services on or after November 1, 2000, shall submit, to the Alabama Bureau of Investigation Department of Public Safety, a request for a criminal history background information check accompanied by the following:

- (a) Prior to or on the first day of employment or, a statement shall be signed, which includes the mandatory statement above, indicating whether he or she has ever been convicted of a crime, and if so, fully disclosing all convictions. The mandatory statement shall be submitted to the Department of Human Resources Criminal History Checks Unit. A copy shall be kept on file in the approving agency's office.
- (b) A substitute, caregiver, volunteer, domestic worker and any other person who has contact with the children or unsupervised access to the children, who fails or refuses to sign the required Mandatory Criminal History Check Notice and complete the questions shall not be employed, or allowed to perform volunteer services.
- (c) If an applicant fails or refuses to sign the required Mandatory Criminal History Check Notice and complete the questions, the Department shall revoke or refuse to renew the home's license.
- (d) Upon receipt of a signed Mandatory Criminal History Check Notice, revealing no disqualifying convictions, a substitute, caregiver, volunteer, domestic worker and any other person who has contact with the children or unsupervised access to the children, may be employed, or perform volunteer services at the discretion of the licensee, pending receipt of a suitability determination from the Department.
- (e) Within five business days of being employed, or beginning volunteer service the following shall be submitted to the Alabama Bureau of Investigation, Department of Public Safety:
 - (i) Fingerprints, properly executed by a law enforcement agency or an individual properly trained in fingerprinting techniques.
 - (ii) Written consent from each, substitute, caregiver, volunteer, domestic worker, or any other person who has contact with the children or unsupervised access to the children, for the release of the criminal history background information to the Department of Human Resources. A copy shall be submitted to the Department of Human Resources Criminal History Checks Unit. A copy shall be kept on file in the approving agency's office.
 - (iii) The required fee.

- (iv) Identification verification of name, date of birth, race, sex, and Social Security number in the form of a photo identification from any governmental agency, such as a driver's license, non-driver's identification, or program participation card. A copy of the identification verification shall be kept on file in the approving agency's office.
 - (f) Fingerprints may be collected through the use of inkpads and fingerprint cards or through the use of ink-less "live scan" fingerprinting devices to collect and print fingerprints on cards or transmit the fingerprints electronically to the Department of Public Safety. When no copy of the fingerprint card is available because of the electronic transmission of live scan fingerprints, written documentation from the individual or law enforcement agency that the fingerprints have been collected and transmitted shall be maintained on file in the DHR county office or the child-placing agency, and sent to the Department's Criminal History Check Unit.
 - (g) Fingerprints are not required when a disability prevents an individual from being fingerprinted. Disabilities preventing fingerprinting include the loss of both hands, severe scarring of all fingers, closed paralytic hands, and similar disabilities. In situations involving a covered disability, a completed Criminal History Information Consent and Release form is required. The Department of Public Safety shall conduct a criminal history background information check by name and Social Security number in such cases. Documentation or verification of that the disability prevents fingerprinting shall be obtained from law enforcement or from an individual trained in fingerprinting techniques and shall be submitted to the Department of Public Safety and the Department of Human Resources.
- (5) Criminal history background information checks shall be performed by the Alabama Department of Public Safety. National criminal history background checks shall be requested by the Department of Public Safety from the Federal Bureau of Investigation. Criminal history background reports shall be sent to the Department of Human Resources.
 - (6) The Department of Human Resources shall review the report and determine whether the applicant or other person meets the suitability requirement based on the criminal history background report. The Department shall issue a suitability determination and maintain a confidential file on individuals for whom a criminal history background information report or report updates have been received.

- (7) Upon receipt of a determination of unsuitability, the affected individual shall be terminated from employment or volunteer work.
- (8) The Department shall suspend or revoke the license or deny the initial application or the application for renewal if the applicant/licensee receives a determination of unsuitable character.
- (9) The Department shall send a copy of the letter determining suitability status to the individual affected and to the licensee. The individual has thirty (30) days from the date of notification to request in writing a reversal of the determination of suitability if the disqualifying conviction is not for a sex crime, or a crime against a child, an elderly individual, or an individual with disabilities. The affected individual shall show clear and convincing evidence of successful rehabilitation.
- (10) The Department shall send a copy of the report received from the Department of Public Safety to the affected individual. The affected individual shall have the opportunity to challenge the accuracy of the report.
- (11) If a suitability determination letter is received by the licensee from the Department's Criminal History Check Unit stating an individual is suitable for employment based on the absence of any disqualifying convictions, the licensee shall make his or her own determination regarding employment or volunteer work. No right to employment is created by the issuance of a letter stating an individual is suitable for employment.
- (12) Only one criminal history background check shall be required per individual. If the individual certifies on the Mandatory Criminal History Check Notice statement that a criminal history check has been performed by the Department or by the Department of Education, the Department will issue a determination of suitability based on the criminal history report received. If the previous report cannot be obtained, a new criminal history check shall be required.
- (13) The licensee shall inform the Department of any criminal convictions and current criminal charges involving the licensee, substitutes, caregivers, domestic workers, and other persons who have contact with the children or unsupervised access to the children, which occur after a license/permit is obtained. Such reports shall be made within 24 hours and followed by a written report within five (5) days. (See Section F., 2., Reports to the Department for details.) This information shall be kept on file by the Department.

d. Evidence of Unsuitable Character

- (1) Convictions for any of the following crimes **shall** make an applicant/licensee, caregiver, substitute, domestic worker, volunteer, or any other person unsuitable to hold a license/permit or have contact with the children or unsupervised access to children
 - (a) Murder, manslaughter, or criminally negligent homicide.
 - (b) A sex crime, including the following:
 - (i) Enticing a child to enter a vehicle, room, house, office, or any other space for immoral purposes, as proscribed by Section 13A-6-69 of the Code of Alabama 1975.
 - (ii) Incest, when the offender is an adult and the victim is a minor, as proscribed by Section 13A-13-3 of the Code of Alabama 1975.
 - (iii) Kidnapping of a minor, except by a parent, in the first or second degree, as proscribed by Section 13A-6-43 or Section 13A-6-44 of the Code of Alabama 1975.
 - (iv) Promoting prostitution in the first or second degree, as proscribed by Section 13A-12-111 or Section 13A-12-112 of the Code of Alabama 1975.
 - (v) Rape in the first or second degree, as proscribed by Section 13A-6-61 or Section 13A-6-62 of the Code of Alabama 1975.
 - (vi) Sexual misconduct, as proscribed by Section 13A-6-65 of the Code of Alabama 1975.
 - (vii) Sexual torture, as proscribed by Section 13A-6-65 of the Code of Alabama 1975.
 - (viii) Sexual abuse in the first or second degree, as proscribed by Section 13A-6-66 or Section 13A-6-67 of the Code of Alabama 1975.
 - (ix) Sodomy in the first or second degree, as proscribed by Section 13A-6-63 or Section 13A-6-64 of the Code of Alabama 1975.
 - (x) Soliciting a child by computer for the purposes of committing a sexual act and transmittal of obscene

material to a child by computer as proscribed by Sections 13A-6-110 and 13A-6-111 of the Code of Alabama 1975.

- (xi) Violation of the Alabama Child Pornography Act, as proscribed by Section 13A-12-191, 13A-12-192, 13A-12-196, or 13A-12-197 of the Code of Alabama 1975.
 - (xii) Any solicitation, attempt, or conspiracy to commit any of the offenses listed in paragraphs i through xi, inclusive.
 - (xiii) A crime listed in the Community Notification Act, Chapter 20 of Title 15 of the Code of Alabama 1975.
- (c) A crime that involves the physical or mental injury or maltreatment of a child, the elderly, or an individual with disabilities.
 - (d) A crime committed against a child.
 - (e) A crime involving the sale or distribution of a controlled substance.
 - (f) Robbery.
 - (g) A crime listed in the federal Adoption and Safe Families Act as prohibiting a person from being employed or as working as a volunteer or receiving approval to work with children.
 - (h) A violation or attempted violation of an offense committed outside the State of Alabama or under federal law is a sex crime or any other crime listed in this notice if the offense would be a crime listed in this notice in Alabama.
 - (i) Reports of adult or child abuse/neglect (with or without criminal convictions), related to crimes listed in ((1)) through ((8)) above, with a final disposition of indicated, in this or any other state.
- (2) Examples of evidence which **may** make an applicant/licensee, caregiver, substitute, domestic worker, volunteer, or any other person, unsuitable to hold a license/permit or have contact with the children or unsupervised access to children, include but are not limited to the following:
- (a) any felony conviction in this or any other state;

- (b) theft and other financial crimes related to business activities
 - (c) misdemeanor convictions in this or any other state;
 - (d) operating a motor vehicle while under the influence of or while impaired by the use of intoxicating liquor or drugs;
 - (e) offenses involving the reckless operation of a motor vehicle at an excessive speed;
 - (f) a crime involving the possession of a controlled substance;
 - (g) operating a child care facility without a license/permit/exemption;
 - (h) refusal to cease operations of an unlicensed child care facility;
 - (i) a history of consistent failure to maintain minimum standards while operating a child care facility;
 - (j) refusal or failure to cooperate in any Department investigation or inspection;
 - (k) making false or misleading statements or reports to the Department;
 - (l) past history of the individual regarding his/her truthfulness;
 - (m) the individual's ability to care for children; or
 - (n) reports of adult or child abuse/neglect (with or without criminal convictions) other than those listed in (a) ((2)) above, with a final disposition of indicated, in this or any other state.
- (3) Evidence in item (b) ((1)) through ((14)) above, will be evaluated to determine whether or not it constitutes a danger to the children based on the seriousness of the crime, the existence of extenuating circumstances, the propensity to recommit the crime, and evidence of rehabilitation since the crime was committed.
- (4) An application for a license shall be denied or a license or permit shall be suspended or revoked if the applicant/licensee, a substitute, caregiver, domestic worker, volunteer, or any other person who has contact with the children or unsupervised access to the children, is determined to be of unsuitable character to work with children, to have contact with children or to have unsupervised access to children.

C. Child and Family Services

1. Case Load Assignments

The number of cases for which professional staff are responsible shall not exceed those defined by the R. C. Consent Decree as outlined by the following, unless otherwise defined by policy:

- | | | |
|----|-------------------------------|----|
| a. | Traditional foster care cases | 18 |
| b. | Therapeutic foster care cases | 8 |
| c. | Adoptive and resource cases | 40 |

NOTE: All home studies and licenses shall be conducted, approved and maintained/supervised only by licensed social workers.

2. Admission Process

Admission services shall include, but are not limited to, the following:

- a. Obtain and record information that will enable a plan to be developed for a child and his/her family.
- b. Involve in planning for the child, the family, relatives or other adults who have meaning to the child.
- c. Ascertain the type of service needed to determine if the child-placing agency could appropriately serve the child and his/her family.
- d. Children who are referred for non-emergency foster home placements shall have at least one overnight visit with the foster family with whom they are to be placed and it will occur prior to admission to the program.

3. Placement

At the time of admission, the child care facility shall have one of the following:

- (1) A signed Placement Agreement (DHR-DFC-824) (for children who are not in the custody of DHR at the time of admission)
 - (a) The agreement is to be with one of the following:
 - (i) Parent of the child;
 - (ii) The person (other than the parent) or agency having legal custody of the child by virtue of a court order (and a copy of the court order granting such custody); or
 - (iii) The agency authorized to provide out-of-home care by virtue of an agreement between the parent and the agency (a copy of the authorization between the agency and the parent shall be included.

Or

- (2) An Inter-agency Agreement (DHR-DFC-823) (for children who are in the custody of DHR at the time of admission) which includes:
 - (a) Statement regarding provision of medical, dental, surgical, and hospital services; and participation in recreational, social, and educational;
 - (b) A copy of the most recently completed ISP form.

Or

- (3) A court order granting custody of the child to the child care facility, if appropriate. Neither the Placement Agreement nor the Inter-Agency Agreement are needed if the child care facility is granted custody through a court order.

- a. When a child is to be placed, appropriate representatives of the referring agency, the placing agency, appropriate family members, and, when advisable, the child shall share in the planning. There shall be developed a written case/treatment plan which shall include at least the following:
 - (1) The date the plan is developed.
 - (2) Expected outcome or goal of placement (permanent plan) and overall timeframe for achievement.
 - (3) An assessment that identifies the strengths and needs of the child and family and designates measurable, realistic, achievable and time limited service objectives or goal.
 - (4) Preparation for placement, including pre-placement visits when plan is developed prior to placement.
 - (5) Designation of the actions that each person (i.e. the child, the child's family, the foster family, the child-placing agency and the referring agency) will take to reach the objectives and goals; including timelines for achievement.
 - (6) Visiting plan for child with his/her family and any other persons significant to the child, if appropriate.
 - (7) Written consent for emergency medical or surgical care, necessary vaccinations and immunizations, and routine medical care and treatment.
 - (8) A written plan of the financial responsibility of the parent, guardian, legal custodian, or other responsible person or agency.
 - (9) Review the plan at least every six months.
 - (10) The agency or person legally responsible for the child(ren) shall receive a copy of the written case plan.

4. Discharge

- a. The decision as to when discharge is to take place shall be the responsibility of the Treatment /Family Planning Team, and shall address the needs of the child and their family. Discharge planning shall be coordinated with the team at the time of the placement of the child(ren). **No child in the custody of the Department of Human Resources shall be discharged without the completion of an ISP.**
- b. The agency/individual having primary planning responsibility shall coordinate the discharge of the child. Unless there is clear and documented evidence that the child is a danger to himself/herself or others, each agency/individual shall inform the other agency/individual at least 30 days in advance of the proposed date of discharge.
- c. A discharge summary and written recommendation for aftercare shall be developed and provided to the person/agency responsible for aftercare.
- d. The agency or person legally responsible for the child(ren) shall receive a copy of the written discharge plan.

D. Foster Family Homes

A child-placing agency with authority to approve foster homes and to place children in approved foster family boarding homes or foster family free homes shall:

1. Have a licensed social worker to conduct all approvals and subsequent reapprovals of foster homes.
2. Approve only foster homes that meet the requirements of the Minimum Standards for Foster Family Homes: Principles, Regulations and Procedures.
3. Make all placements of children through the approved child-placing agency and with knowledge and consent of the custodial agency.
4. Notify in writing the local County Department of Human Resources in which the foster family home is located that said home has been approved. The County Department shall also be notified when the home is no longer approved.
5. The State Department of Human Resources, Family Services, Office of Foster Care, is to be notified when a DHR employee, State Office or County Office, or DHR Official makes application to become a foster care provider. The homes of DHR officials or DHR employees shall not be approved for use as a foster home provider if there is a possible conflict of interest situation (e.g., personnel that engage in the placement or supervision of foster children, or personnel that regulate the licensing or approval of homes or facilities for the placement of children). The State Department of Human Resources will provide a written statement regarding whether there is a possible conflict of interest.
6. A licensed child-placing agency **shall not** conduct or approve a foster home study on any of its employees, officials, which includes board members, volunteers, or relatives of the aforementioned or anyone else who has direct affiliation with the agency. Arrangements must be made with another licensed

child-placing agency or licensed social worker to conduct and approve the study, make or concur with a placement, provide post-placement supervision of the home and for reapproval of the home.

7. Maintain individual foster family home records on each home used by the child-placing agency in accordance with Paragraph I. 4.
8. Establish a policy that the child-placing agency's social worker will have contact with the child at least every three months and will evaluate and update the written case/treatment plan every six months.
9. Share written evaluations when another agency is working with the family. The child-placing agency shall share written evaluations of the child and his/her situation with the agency working with the family at no greater than six-month intervals.
10. Provide written protocol on the matching of children and foster families and documentation to support placement of children. Placement shall be made only after careful consideration is given as to how well the prospective foster family will meet the child's needs and preferences.

E. Visiting Homes for Children Living in Licensed Child Care Institutions and Group Homes

Visiting home means a resource in a residence of a family where the family receives a child or children, unrelated to said family, for the purpose of providing family care and training for limited periods of time. These homes generally provide the child with a break from group home living, particularly during holidays, weekends and school breaks. The group home or child care institution generally identifies homes in the community for children who do not have other visiting resources. The child-placing agency provides the training and supervision of the home. The same procedures stated above in Section "C" entitled, "Foster Family Homes," and Section I. 4 entitled, "Records" shall be followed with the following exceptions:

1. A letter shall be written to the visiting home family advising that the home is approved for a specified period of time, not to exceed one year. The approval shall be for a specific child or children for either a specified visit(s) or for regular visits. The letter is in lieu of BFC-735, Foster Family Home Approval. One copy of the letter shall be sent to the agency having primary planning responsibility for the child or children, and one copy to the licensed child care institution or group home to authorize the social worker of the licensed child care institution or group home to plan directly with the visiting home parents for visits.
2. The licensed child care institution or group home with responsibility for the child shall be responsible for obtaining necessary authorizations for visits made by the child with the visiting parents at places other than the visiting home, both within and outside the State.
3. Financial reports may be required only as determined necessary by the licensed child-placing agency or by the Department of Human Resources.
4. Copies of documentation of two reference checks.

F. Adoptive Homes

The goal of adoption is to provide the child, in the absence of care and nurture by the child's natural family, with a permanent family, with whom the child may develop his/her own personal identity.

1. General Requirements For Adoptive Applicants
 - a. Applicants must be at least nineteen years of age.
 - b. An applicant, who is a single person, may apply.
 - c. Applicants, who are married, must have been married at least one year.
 - d. Applicants' motivation must be determined and understood.
 - e. Applicants must be financially stable.
 - f. Applications may be accepted by persons employed outside the home; however, the discretion to require full time presence in the home by an applicant to ensure a child's adjustment into the home is reserved.
 - g. Applicants are required to provide medical reports indicating that all family members are in good health.
 - h. Adoptive parents must provide medical treatment to children as recommended by a legally licensed physician.
 - i. Applications shall be accepted from persons of any religious faith.
 - j. Applications may be accepted when either the prospective father or mother is a citizen of the United States.
 - k. The applicant's race or national origin will not be used as the single or exclusive criterion in the placement of children for adoption.
 - l. Applicants and all adult household members must have a criminal history check completed and a suitability letter issued before adoptions can be completed (Refer to B.3.c on Page 19).
 - m. A request for clearance of State Central Registry on child abuse/neglect (DHR-DFC-1598) shall be submitted on each applicant and household member over the age of 14 years of age. (Refer to B.3.b. on Page 18).
2. Adoptive home study requests regarding placement of children who are in the permanent custody of another public state child welfare agency shall be conducted by the Department of Human Resources.
3. The agency shall establish administrative policies, practices and procedures related to adoptions. These shall be clearly defined and explained.
4. The agency shall ensure that the ability of adoptive parents to pay a fee shall not be a criterion of acceptability of applicants, and shall not in any way influence the choice of the most suitable family for each child.
5. Each agency shall develop a resource file of approved adoptive applicants to assure that an adequate choice of families can be considered for any one child.

6. A licensed child-placing agency **shall not** conduct or approve an adoptive home study on any of its employees or officials, which includes board members, volunteers, or relatives of the aforementioned or anyone else who has direct affiliation with the agency. Arrangements must be made with another licensed child-placing agency or licensed social worker to conduct and approve the study, make a placement, provide post-placement supervision and for reapproval.
7. For children whose custody has been permanently removed from the parents and the right of adoption granted by the court to the child-placing agency, the appeal period shall be expired before the child is placed in an adoptive home. An exception can be made for the child to be placed in a prospective adoptive home on a foster home basis prior to the child's being legally free. This must be in the child's best interest. The prospective adoptive parents must understand that this is an at-risk placement and be willing to accept the legal risk. The reasons for making an at-risk placement shall be carefully documented in the case record along with the adoptive parents' understanding of the same.
8. The selection of a home and placement shall be made in accordance with sound child placement practices. Adoptive parents are to be selected on the basis of their capacity to meet the needs of a child. The prospective couple should have the opportunity to decide whether the child is suitable to them based on the background information that is shared.

G. Adoption Statutes

The child-placing agency shall ensure that the child has full protection of the law through completion of legal adoption in accordance with Title 26, Chapter 10, Sections 10 A and 10 C, Code of Alabama 1975 (see copy of the Alabama Adoption Law in the Addendum) or appropriate adoption laws where the child lives.

If the adoptive family moves to another state during the adoption process (in advance of a Final Decree of Adoption being issued by the court), the agency which placed the child shall request services through the Interstate Compact on the Placement of Children of a corresponding agency or the state social service agency in the other state to follow up on required visits to the family's new home and submit a report in writing to the placing agency.

H. Legal Custody

Custody shall be accepted only when the child-placing agency is equipped to serve the child. A child-placing agency shall be permitted to assume legal custody of a child in cases where the change of legal custody or guardianship is required in the best interests of the child. Transfer of legal custody can be accomplished only through court action.

I. Interstate Placement of Children

In working with any out-of-state agency or individual in the placement of any child, the child-placing agency shall comply with provisions of the Interstate Compact on the Placement of Children law concerning the bringing into the state of any child, or the Interstate Compact on the Placement of Children law of the state into which the child is to be sent. In order to ensure such compliance, all requests and correspondence shall be channeled through the State Department

of Human Resources, Family Services. (See Appendix, Page A-4, Alabama Interstate Compact on the Placement of Children Guidelines)

Reference is made to §§ 38-5-15 and 44-2-20, Code of Alabama 1975:

No person or agency shall bring or send any child into the State of Alabama for the purpose of placing him or procuring his adoption or placing him in any child care facility, as defined herein, without first obtaining the consent of the Department. The Department shall have the power to impose and enforce reasonable conditions precedent to the granting of such consent; and such conditions shall be for the purpose of providing the same care and protection for the child coming into the State of Alabama for placement or adoption as are afforded to a child who is born in the State of Alabama; and such conditions shall include the following: (1) the Department shall be authorized to designate an agency in another state from which said child is being brought or sent, or in which said child's parents or guardian may be found, to interview said parent or parents or guardian, or at least one of them, for the purpose of obtaining social information, background information, and medical information about said child; (2) the Department shall be authorized to receive such information from the designated agency in the other state; (3) the Department shall be authorized to receive the birth certificate of said child from the designated agency in the other state or from another appropriate agency in the other state; (4) the Department shall be authorized to make a thorough investigation of the proposed foster parent or parents, and their home, to determine whether or not they are financially able, physically able, and morally fit to have the care, supervision, training, and control of said child; (5) the Department shall be authorized to make a thorough investigation of any child care facility to which any child is being brought or sent to determine conformity to minimum standards prescribed herein for approval or licensing and to determine the suitability of such child care facility for the care, supervision, training, and control of said child; (6) in case said child, subsequent to being brought into the State of Alabama, becomes dependent, neglected, or delinquent prior to his adoption or becoming of legal age of majority, said child shall be subject to the laws of the State of Alabama as if he were a resident child of this state; (7) the child will be placed in conformity with the rules and regulations of the Department; (8) the person with whom the child is placed shall be responsible for his proper care and training; (9) the Department shall have the right of visitation and supervision of the child and the home or the child care facility in which he is placed until adoption becomes final or the child becomes eighteen years of age; (10) the Department may, pursuant to the provisions of this chapter, prescribe the condition of an agreement or contract with the designated out-of-state agency, when a child is brought into the State of Alabama. The person or agency receiving the child in Alabama shall report to the Department at such reasonable times as the Department may direct, as to the location and well-being of the child, so long as he shall remain within the State and until he shall have reached the age of eighteen years or shall have been legally adopted.

J. Records

The child-placing agency shall maintain case records on all cases.

1. Confidentiality of Records and Information about Children and Their Families
 - a. Confidential information concerning children shall not be used or disclosed for any purpose not directly concerned with the objective of care/treatment-of the child as provided in the Code of Alabama, 1975.

- b. Confidentiality of all information about children and their families shall be maintained as follows:
 - (1) By keeping case records in files that are locked when unattended.
 - (2) By restricting any disclosure of the whereabouts of the children to only (a) the parent or person having legal custody, (b) the agency having legal custody, or (c) persons providing authorized services.
 - (3) By treating as confidential any and all discussions of information about children and their families.

- 2. Family Record – The family record shall include at least the following:
 - a. Completed face sheet
 - b. Legal documents regarding custody and/or adoption
 - c. Family history, including medical history
 - d. Correspondence

- 3. Child’s Record - For each child in foster care or adoptive placement, an individual Child’s Record shall include at least the following:
 - a. Application
 - b. Evaluation of pre-placement visit, including dates (See Admissions Process Section, 2. d., page 30, regarding pre-placement)
 - c. Developmental history of the child
 - d. Certified copy of birth certificate
 - e. Court order(s) or Agreement for Foster Care regarding custody of child
 - f. Annual medical and dental reports
 - g. Evaluation of plan of care/treatment at initial and six month intervals
 - h. School reports when applicable
 - i. Psychological information when available
 - j. Correspondence
 - k. Placement history list
 - l. Placement Agreement or Interagency Agreement
 - m. Discharge and aftercare plans
 - n. Case/progress notes (e.g., daily, weekly, monthly)

- 4. Foster Family Home Records shall include at least the following:
 - a. Application
 - b. Home study (Family Portfolio), including updated medical and financial reports (medical reports are to be kept confidential)
 - c. Reports of ABI and FBI criminal records check of all members of the household 19 years of age or older and clearance of the Central Registry,

on all household members ages fourteen (14) and older, through the Department of Human Resources

- d. Copy of Foster Family Home Approval including initial and annual approvals
 - e. Copies of documentation of three reference checks during initial, and one reference check during annual renewal
 - f. Record of placements, supervision (including documentation of semi-annual reviews, incident reports or records on serious behavior problems, illness or injuries and training sessions attended), and annual evaluations (including three initial references and one annual reference)
 - g. Adoption/foster placement recording and subsequent supervision, if applicable
 - h. List of children placed in the home, including dates of placement and removal
 - i. Correspondence
 - j. Training
 - k. Results of Central Registry Clearance
5. Adoptive Home Records shall include at least the following:
- a. Application
 - b. Medical and financial statements
 - c. Legal documents regarding marriage, divorce, citizenship, etc.
 - d. Record of ABI and FBI criminal records check of all members of the household 19 years of age or older and clearance of the Central Registry, on all household members ages fourteen (14) and older, through the Department of Human Resources
 - e. Home study and disposition of application
 - f. Record of contacts prior to placement
 - g. Record of placement and subsequent supervision

Note: Checklist for Completing Independent Adoption Investigations (DHR-DFC-1746) is located in the Appendix to use as a guide for submitting information

6. Adoption Reapplication

Application for additional child/children may be taken at any point after the first adoption is legally finalized. The following information will be needed:

- a. Current application forms including current medical (within the last 12 months) on parents and child
- b. A criminal history check must have been submitted to the ABI and FBI and clearance given in the form of a suitability letter. If a previous criminal history check is older than November 2000 a new criminal history check shall be required before a suitability letter will be issued.

- c. Clearance of the Central Registry on all household members ages fourteen (14) and older through the Department of Human Resources
- d. All other requirements for adoption apply. For more information, refer to *Adoption Policies and Procedures*.

K. Office Setting

The agency shall provide adequate and comfortable facilities for a reception room; offices for interviewing, placement of children, conferences, and clerical staff; a room (or rooms), appropriately furnished and which offers privacy, to serve as a meeting place for adults and children for visits, becoming acquainted, and/or in preparation for adoption or for foster family placement and a secure repository for storage of records and microfilms. The agency shall not store agency records in a room in a personal home or have the operation of the agency in a room in a personal home.

L. Application and the Procedure for License

1. Application for License

(See Section 38-7-4, Code of Alabama 1975)

- a. Any person, group of persons or corporation may obtain an application form for a license to operate a child-placing agency by contacting the Department of Human Resources by letter, telephone or scheduled visit.
- b. With the application form, a person is provided a copy of Minimum Standards for Child-placing Agencies: Principles, Regulations and Procedures and an Information Form (See Appendix).
- c. The completed application should be returned to the Department within 30 days from the date of inquiry if such person, etc., wishes to pursue his/her plan to operate a child-placing agency or if such person is already operating a child-placing agency illegally (without a license).

2. Examination and Investigation of Application

Upon receipt of the completed application, an examination of the premises of the agency and an investigation of the persons responsible for the function of the agency shall be made by a representative of the Department. The examination and investigation will be based on the minimum standards and regulations as prescribed and published by the Department. Required information will be noted on the Information Form by the applicant as such requirements are met.

3. Disposition of the Application

When minimum standards for the operation of a child-placing agency have been met, a six (6) month permit will be issued. At the end of a 6 month period, if the Department determines that all standards have been met, the Child-placing agency will be issued a valid license that will be applicable for a period of two years. If denial of a license is indicated, the Department will notify the applicant, verbally and in writing, of the decision, pointing out and discussing those areas of the minimum standards which have not been met.

4. Renewal of a License

- a. Application for renewal of a permit/license to continue operating a child-placing agency shall be made to the Department two months prior to the expiration date of the current permit/license, and on forms prescribed by the Department. An updated Information Form shall accompany the application.
- b. The Department shall reexamine and reevaluate all aspects of the child-placing agency, its facilities and program, included in the initial application process.
- c. A renewal of a permit/license shall be issued if, upon reexamination, the Department is satisfied that the child-placing agency, officers and staff of the child-placing agency continue to meet and to maintain the minimum standards prescribed and published by the Department.
- d. Quality Assurance Reports are to be completed on an annual basis and submitted to the Office of Licensing and Resource at the State Department of Human Resources. This report will be submitted at the time of licensing renewal and must be in a format form with content that is acceptable to DHR. The report will address stability, safety, permanency and well-being giving quantitative results of outcomes in each of the areas.

5. Department Visits, Examination and Consultation

Visits to the child-placing agency are made by representatives of the Department to determine continued conformity with minimum standards and to provide consultative services.

- a. Visits to the child-placing agency are made by representatives of the Department to determine if minimum standards are met, to investigate a complaint and to offer consultative services.
- b. Visits made for the purpose of determining conformity with minimum standards or investigating a complaint may be made without prior notice.
- c. The licensee may request visits of a Department representative for consultation, etc.
- d. Complaints made to the Department against the licensee shall be discussed with the licensee.
- e. The licensee shall have the opportunity to submit, in writing, information regarding inspections resulting from complaints reported to the Department.

M. Revocation of A License

[See § 38-7-8, Code of Alabama 1975]

The Department may revoke or refuse to renew the license or refuse to issue a full license to the holder of a 6-month permit, should the licensee fail to comply with the following standards:

1. Consistently fail to maintain standards prescribed and published by the Department;
2. Violate the provisions of the license issued;
3. Furnish or make any misleading or any false statements or report to the Department;
4. Refuse to submit to the Department any report or refuse to make available to the Department any records required by the Department in making investigation of the child care facility for licensing purposes; provided, however, that the Department shall not revoke or refuse to renew a license in such cases unless it has made written demand on the person, firm, or corporation operating the facility requesting such reports, and such person, firm or corporation fails or refuses to submit such records for a period of ten days;
5. Fail or refuse to submit to an investigation by the Department;
6. Fail or refuse to admit authorized representatives of the Department at any reasonable time for the purpose of investigation;
7. Fail to provide, maintain, equip and keep in safe and sanitary condition premises established or used for child-placing as required under standards prescribed by the Department, or as otherwise required by any law, regulation or ordinance applicable to such facility;
8. Refuse to display its license or permit; or
9. Fail to maintain financial resources adequate for the satisfactory care of children served in regard to upkeep of premises and provisions for personal care, medical services, clothing, learning experience and other essentials in the proper care, rearing, and training of children.

* * *

If an inspection of a licensed or approved child care facility by the Department discloses any condition, deficiency, dereliction or abuse which is, or could be, hazardous to the health, the safety, or the physical, moral, or mental well-being of the children in the care of the child care facility being inspected, the Department shall have the power to revoke without notice the license or approval or 6-month permit. (See § 38-7-11, Code of Alabama 1975.)

N. Appeal for Fair Hearing and Review

In the event a party or an applicant for a license or a licensee is denied a license or a renewal of a license or has a license suspended or revoked for the operation of a child-care facility required by this chapter to be licensed by the Department, or in the event an application for such a license or renewal of a license is not acted upon with reasonable promptness, or in the event an

approval required by this chapter to be issued by the Department is denied or revoked or unduly delayed, any aggrieved party may appeal to the Department for a fair hearing of his case. Notice and opportunity for a fair hearing and notice of right to counsel shall be given the appellant by the Department, and at this hearing any party at interest may appear and present any relevant facts. The decision or action of the Department on any fair hearing on any such appeal shall be final and binding and shall be complied with.

Any party aggrieved by a final decision or action of the Department refusing to grant or to issue, or suspending or revoking a license or an approval for the operation of any child-care facility required by law to be licensed or approved by the Department, is entitled to a review of such final decision or action by filing a complaint with the circuit court in the county in which the child-care facility is located or in the circuit court of Montgomery County, Alabama. All such complaints shall be filed within 30 days from the date of such final decision or action, and a review shall be granted as a matter of right upon the filing with the Department of a bond for security of costs of said review and upon filing said complaint both with the register or clerk of the circuit court, as designated herein above, and with the Department. The court may set aside the final decision of the Department only upon a finding of the court that such final decision was illegal, capricious or unsupported by the evidence. Upon motion of either party or upon its own motion, the court may at its discretion take additional evidence. The provisions of this section shall not apply to boarding homes and free homes as defined in this chapter. (Acts 1971, 3rd Ex. Sess., No. 174, p. 4423, § 9.)

O. Provisions of the License

1. Licenses issued by the Department in child-placing agencies are valid for two years from the date of issuance, unless revoked by the Department or voluntarily surrendered by the licensee.
2. The license is not transferable from one individual or group or corporation to another, or from one building to another.

P. Penalty for Unlicensed Facilities

1. If the Department representative determines, through investigation, that any person, group of persons, or corporation is, or has been, operating an unlicensed child care facility, the results of the investigation shall be reported to the Attorney General and to the appropriate District Attorney for prosecution. (§ 38-7-10, Code of Alabama 1975.)
2. Filing of the report may be delayed for a period, not to exceed 60 days, to allow the person, group of persons or corporation reasonable opportunity to apply for a license or 6-month permit. (§ 38-7-10, Code of Alabama 1975.)
3. Any person, group of persons, association or corporation who conducts, operates or acts as a child care facility without a license, or a 6-month permit or an approval ... is in violation of the provisions of the Child Care Act of 1971 ... or if any person, etc. violates any other provision of said Act ... shall be guilty of a misdemeanor ... and shall be fined not less than \$100 nor more than \$1000 or be imprisoned in the county jail not longer than one year or both fine and imprisonment.... (§ 38-7-16, Code of Alabama 1975.)

APPENDIX

APPENDIX

Representation on the Advisory Committee on Licensing Standards for Child Care Facilities

Alabama Guidelines-Interstate Compact on the Placement of Children

Checklist for Completing Independent Adoption Investigations

**Representation on the
Advisory Committee on Licensing Standards
For Child Care Facilities**

Alabama Advisory Committee on Children and Youth
Alabama Association of County directors of Human Resources
Alabama Association of County Supervisors of Human Resources
Alabama Association of Licensed Child Care Centers
Alabama Association for Young Children
Alabama Baptist State Convention – Sunday School Department
Alabama Conference on Child Care
Alabama Head Start Directors Association
Alabama Residential Child Care Association
Alabama Sheriffs Boys and Girls Ranches, Inc.
Alabama State Fire Marsha
Alabama Therapeutic Foster Care Providers Association (ATFCPA)
Al-Hajj, Inc.
Catholic Social Services
Children’s Aid Society
Day Care Association of Huntsville and Madison County
Daycare Center Provider
Daycare Consumer
Daycare Unit – Jefferson County Department of Human Resources
Daycare Unit – Madison County Department of Human Resources
Daycare Unit – Mobile County Department of Human Resources
Daycare Unit – Montgomery County Department of Human Resources
Daycare Home Provider
Federation of Community Controlled Centers of Alabama for Child Care (FOCAL)
Gateway
Governor’s Designee – Child Day Care
Harris Home for Children, Inc.
Jefferson County Foster Parents Association
Joint governor’s/Legislative Task Force on Child Day Care
Mobile County Foster Parents Association
Montgomery County Foster Parents Association
Seraaj Family Homes, Inc.
St. Mary’s Home
State Department of Education – Early Childhood Education
State Department of Mental Health/Mental Retardation
State Department of Public Health
United Methodist Children’s Home

Alabama Guidelines
Interstate Compact on the Placement of Children

The following is a list of information required to be in an ICPC packet on children to be placed for adoption in Alabama.

- 1) ICPC-100A completed and signed by the birth mother if the proposed placement is independent; signed by agency representatives if an agency placement and signed by the sending Compact administrator – 4 copies.
- 2) Verification of child's birth - either a copy of the birth certificate or a copy of the birth record from the hospital – 3 copies.
- 3) A current medical on the child signed by a physician – 3 copies.
- 4) Relinquishment/termination order/birth parents' consents. According to Alabama law, a relinquishment signed by a birth parent transfers physical custody of a child to the Department of Human Resources or a licensed child-placing agency, which then has the authority to place the child for adoption. A consent or relinquishment may be taken at any time, including prior to the birth of the adoptee, but the consent of the adoptee's natural mother taken prior to birth must be signed or confirmed before a probate judge - 3 copies of consents/termination orders.
- 5) Home study on the adoptive couple completed by the Department of Human Resources, a licensed child-placing agency or a private independent practitioner certified by the State Board of Social Work Examiners who has been appointed by the court - 3 copies.
- 6) Social and medical information on birth parents. In cases of agency placements, this can be in the form of a social summary. In cases of independent placements, there must be a recording of a birth parent interview to cover social/medical information, why the birth parent desires to be relieved of the child's care, and the birth parent's understanding of the decision. The birth parent interview must be conducted by a representative of the state's social service agency, a representative of a licensed child-placing agency or an individual who is a licensed social worker for private independent practice who is appointed by the court to provide adoption services - 3 copies.

The following is a list of information required to be in an ICPC Packet on children to be placed from Alabama.

- 1) ICPC-100A completed and signed – 5 copies.
- 2) A social summary to include social/medical information on the birth parents, if an agency placement. A birth parent interview to include social/medical information on the birth parents, why they wish to be relieved of the child's care, and the birth parents' understanding of this decision. The birth parent interview must be conducted by a representative of the Department of Human Resources; a representative of an Alabama licensed child-placing agency; or a private independent practitioner who has been appointed by the court - 3 copies.
- 3) Home study on the prospective adoptive couple by a licensed agency in the receiving state.
- 4) A medical on the child – 3 copies.
- 5) Relinquishment/termination orders/consents. (Please refer to #4 above) – 3 copies.

Points to Remember:

- A - Alabama prefers to accept complete ICPC packets only. However, in the instance of pre-birth filing, at a minimum, the 100A and social/medical information on the birth parents must be received.
- B - Faxed material will be accepted only in cases where additional information has been requested and only if approval from the Adoption Deputy Compact Administrator is secured before faxing information. ICPC packets will be transmitted by Federal Express or overnight mail upon request only when the packet is received ready to mail with a valid Federal Express account third party billing number or an addressed envelope with sufficient postage attached.
- C - Alabama will give verbal approval for placement to the local Alabama agency and the corresponding ICPC Office. Requests for additional information will be communicated to the appropriate agency or private independent practitioner in Alabama. Inquiries regarding the status of ICPC referrals will be received by the Office of Adoption from the sending agency/individuals only.
- D - Each complete ICPC packet is reviewed by the Deputy Compact Administrator in the order in which it was received. Please allow 4-10 days for completion.
- E - Prospective adoptive couples should not travel to pick up a child until **after** consent is received through ICPC offices.
- F - The ICPC 100A must specify a supervising agency or private independent practitioner who is licensed by the Alabama State Board of Social Work Examiners and appointed by the court before we will approve placement. We will look to that agency to provide services through finalization of the adoption.

- G - The Alabama adoption statute requires that the medical histories of the adoptee and the biological parents shall be provided to the petitioner in writing before a final decree of adoption is entered. Copies of the medical histories are also filed with the court. After the final decree of adoption is issued, a summary of identifying information and a summary of non-identifying information are to be filed with the State Department of Human Resources.

- H - The Interstate Compact on the Placement of Children is an agreement among the states regarding the placement of children. Both states involved in a placement are to mutually agree (preferably in writing) prior to placement.

CHECKLIST FOR COMPLETING INDEPENDENT ADOPTION INVESTIGATIONS

FORMS

- _____ Financial (check for accuracy & discussed with applicants)
- _____ Relative forms (for both applicants)
- _____ Current Medical (within one year)for:
 - _____ Husband
 - _____ Wife
 - _____ Children in Home
 - _____ Others in Home
 - _____ Adoptee
 - _____ Medical History of Child (DHR-DFC –1748)
 - _____ Medical History of Child’s Biological Parents (DHR-DFC –1748)

VERIFICATIONS

- _____ Current Marriage
- _____ All Former Divorces
- _____ Deaths of Former Spouses
- _____ ABI & FBI Clearances on Applicants and Household Members Age 18 and Older
- _____ Consents of All Parties Required to Consent
- _____ Adoptee’s Birth Certificate
- _____ Verification of Fees and Charges
- _____ CA/N clearance
- _____ Pet Vaccination

ORIGINAL NARRATIVE RECORDING (typed with appropriate headings)

- _____ Joint (if couple) Interview with Petitioners
- _____ Individual Interview with Husband
- _____ Individual Interview with Wife
- _____ Individual Interview with Other Household Members (including petitioners’ other children)
- _____ References
 - _____ Minister
 - _____ Relative of Husband
 - _____ Relative of Wife
 - _____ Husband’s Employer
 - _____ Wife’s Employer
 - _____ Friend(s)
- _____ Observation of Adoptee (within 45 days of placement)
- _____ Interview with Birth Mother
- _____ Interview with Birth Father and/or Legal Father
- _____ Home Visit (within 45 days of placement)
- _____ Documentation of Circumstances of Placement
- _____ Summary Sheets, identifying and non-identifying

ADDENDUM

ADDENDUM

Title 38, Chapter 7, Code of Alabama, 1975, The Child Care Act

Title 26, Chapter 10, Code of Alabama, 1975, Alabama Adoption Code

Department of Human Resources Regulations and Procedures for a Fair Hearing

ALABAMA LAW

Title 38, Code of Alabama 1975 Chapter 7, Child Care

§38-7-1. Short title.

This chapter shall be known and may be cited as the Child Care Act of 1971. (Acts 1971, 3rd Ex. Sess., No. 174, p. 423, §1.)

§38-7-2. Definitions.

Terms used in this chapter, unless the context otherwise requires, have the meanings ascribed to them in this section. When not inconsistent with the context, words used in the present tense include the future, words in the singular number include the plural number, and words in the plural number include the singular number, and the word "shall" is always mandatory and not merely directory:

- (1) CHILD. Any person under 19 years of age, a person under the continuing jurisdiction of the juvenile court pursuant to Section 12-15-32, or a person under 21 years of age in foster care as defined by the Department of Human Resources.
- (2) CHILD CARE INSTITUTION or INSTITUTION FOR CHILD CARE. A child care facility where more than 10 children are received and maintained for the purpose of providing them with care or training or both, or transitional living program services, but does not include:
 - a. Any institution for child care which is under the ownership or control, or both, of the State of Alabama, or which is operated or certified or licensed by another agency or department of the state of Alabama.
 - b. Any juvenile detention home established and operated by the state of Alabama;
 - c. Any bona fide boarding school in which children are primarily taught branches of education corresponding to those taught in public schools, grades one through 12, or taught in public elementary schools, high schools or both elementary and high schools.
- (3) CHILD PLACING AGENCY A public or private child-care facility which receives, places, or arranges for placement any child or children for the purpose of placing or arranging for the placement of the child or children in foster family homes or other facilities for child care apart from the custody of the child's or children's parents. The term "child-placing agency" includes, but is not limited to, all agencies established and maintained by a municipality or other political subdivision of the state of Alabama to protect, guard, train or care for children outside their own homes, but does not include any circuit court or juvenile court or any duly appointed juvenile probation officer or youth counselor of the court who receives and places children under an order of the court.

(4) DAY CARE CENTER. Any child care facility receiving more than 12 children for daytime care during all or part of a day. The term “day care center” includes, but is not limited to, facilities commonly called “child-care centers,” “day nurseries,” “nursery schools,” “kindergartens” and “play groups” with or without stated educational purposes. Such term further includes, but is not limited to, kindergarten or nursery schools or other daytime programs operated as a part of a private school and receiving more than 12 children younger than lawful school age for daytime care for more than four hours a day, with or without stated educational purposes. The term does not include:

a. Kindergartens or nursery schools or other daytime programs operated by public elementary systems or secondary level school units or secondary level school units or institutions of higher learning;

b. Kindergartens or nursery schools or other daytime programs, with or without stated educational purposes, operating no more than four hours a day and receiving children younger than lawful school age;

c. Kindergartens or nursery schools or other daytime programs operated as a part of a private school and receiving children younger than lawful school age for four hours a day or less, with or without stated educational purposes;

d. Facilities operated for more than four hours a day in connection with a shopping center or service or other similar facility, where transient children are cared for temporarily while parents or custodians of the children are occupied on the premises or are in the immediate vicinity and readily available; provided, however, that such facilities shall meet local and state fire and health requirements;

e. Any type of day care center that is conducted on federal government premises; or

f. Special activities programs for children of lawful school age including, but not limited to, athletics, crafts instruction and similar activities conducted on an organized and periodic basis by civic, charitable and governmental organizations; provided, however, that local and state fire and health requirements are met.

(5) DAY CARE HOME. A child care facility which is a family home and which receives not more than six children for care during the day.

(6) DEPARTMENT. The department of human resources of the State of Alabama.

(7) FACILITY FOR CHILD CARE or CHILD CARE FACILITY. A facility established by any person, group of persons, agency, association or organization, whether established for gain or otherwise, who or which receives or arranges for care or placement of one or more children, unrelated to the operator of the facility, apart from the parents, with or without the transfer of the right of custody, in any facility as defined in this chapter, established and maintained for the care of children.

(8) FOSTER FAMILY HOME. A child care facility in a residence of a family where the family receives a child or children, unrelated to said family, for the purpose of providing family care and training on a full-time basis. The types of foster family homes are defined as follows:

a. BOARDING HOME. A foster family home wherein the foster family receives a child or children and receives payment for their care; provided however, that

the number of children so received shall not exceed six, unless said children are of common parentage.

b. FREE HOME. A foster home which does not receive payment for the care of a child or children and which may or may not receive the child or children for the purpose of adoption.

(9) GROUP DAY CARE HOME. A child care facility which is a family home and which receives at least seven but no more than 12 children for care during part of the day where there are at least two adults present and supervising the activities.

(10) GROUP HOMES. A child care facility where at least seven but not more than ten children are received and maintained for the purpose of providing them with care or training or both.

(11) MATERNITY CENTER. A facility in which any person, agency or corporation receives or cares for one or more minor pregnant girls, except that the term does not include hospitals.

(12) NIGHT CARE FACILITY. A child care facility which is a center or family home receiving a child or children for care during the night. A "night care facility" is further defined as follows:

a. NIGHTTIME CENTER. A facility which is established to receive more than 12 children for nighttime care.

b. NIGHTTIME HOME. A family home which receives no more than six children for nighttime care.

c. GROUP NIGHTTIME HOME. A child care facility which is a family home which receives at least seven but no more than 12 children for nighttime care and where there are at least two adults present and supervising the activities.

(13) RELATED. Any of the following relationships by blood, marriage or adoption: Parent, grandparent, brother, sister, stepparent, stepbrother, stepsister, half-brother, half-sister, uncle or aunt, and their spouses.

(Acts 1971, 3rd Ex. Sess., No. 174, p. 4423, §§2-2.12; Acts 1987 No. 87-671, p. 1198; Acts 1993, 1st Ex. Sess., No 93-904, p. 197, §1; Acts 1995, No 95-255, p. 427, §1.

§38-7-3 License to operate or conduct child care facility--Required; exemption for church preschool programs; filing of notices maintaining records, etc.; form for affidavits by parents or guardians; investigation of complaints by district attorney.

No person, group of persons or corporation may operate or conduct any facility for child care, as defined in this chapter, without being licensed or approved as provided in this chapter; provided, however, that nothing in this section or in this chapter prohibits an employee of the department from carrying out the duties of the department as provided in this title. Provided, further, the provisions of this chapter, shall not apply to preschool programs which are an integral part of a local church ministry or a religious nonprofit elementary school, and are so recognized in the church or school's documents, whether operated separately or as part of a religious non profit elementary school unit, secondary school unit or institution of higher learning under the governing board or authority of said local church or its convention, association, or regional body to which it may be subject; provided that notice is filed by the governing board or authority of the church or school with the department that said church or school meets the definition of a local church ministry or a religious nonprofit elementary school under terms of this section and are exempt from regulation by the department and a notice of intent to operate said programs is given to the appropriate fire and health departments so that said facilities shall be inspected in accordance with the state and local fire and health requirements for such programs. In addition, all exempt churches thereunder shall publish annually, on church letterhead, a notice to the department certifying that the following records are being maintained by the church: fire and health inspection reports; immunization verifications for all children; medical history forms for all staff and children and that the following information shall be available to parents or guardians prior to enrolling their children in said church ministry; staff qualifications; pupil-staff ratio; discipline policies; type of curriculum used in the learning program; the religious teachings to be given each child; and the type of lunch program available; provided further that prior to enrolling and annually thereafter parents or guardian and a responsible individual representing the governing board as authority of the church or school be required to sign and file with the department the affidavits provided by this section that the parents or guardian have been notified by said responsible individual that the church or school has filed notice and is exempt from regulation by the department. The district attorney of the county in which the preschool program is located shall, upon proper presentment of charges, investigate at his discretion any allegations against any such church under the laws of the state of Alabama.

Form of Affidavit for Parent/Guardian

STATE OF ALABAMA

COUNTY OF

Before me, a notary public in and for said state and county, appeared and is known to me, after being duly sworn or affirmed, says as follows:

That affiant is the parent or legal guardian of the minor child/children; that affiant has been notified by; a representative of church/school, that said church or school has filed notice and is exempt under law from regulation by the Department of Human Resources.

. Parent/Legal Guardian

Sworn, or affirmed to and subscribed before me this day of, 20

Form of Affidavit for Church/School

STATE OF ALABAMA

COUNTY OF

Before me, a notary public in and for aid state and county, appeared and is known to me, after being duly sworn or affirmed says as follows:

That affiant is the designated representative of church/school and that the below listed parents/guardians have been notified prior to enrollment/reenrollment that church/school has filed notice with and is exempt under law from regulation by the Department of Human Resources:

. Representative

Sworn, or affirmed to and subscribed before me this day of, 20

(Acts 1971, 3rd Ex. Sess., No. 174, p. 4423, 3; Acts 1981, No. 81-310, p. 396.)

§38-7-4. Same -- Application; investigation; application to operate foster family home may be made to licensed child-placing agency.

Any person, group of persons or corporation who or which receives children or arranges for care or placement of one or more children unrelated to the operator shall apply for a license or for approval to operate one of the types of child-care facilities defined in this chapter. Application for such license or approval to operate a child-care facility shall be made to the department in the manner and on forms prescribed by it. The department, upon receiving such application, shall examine the premises of the child-care facility, including buildings, equipment, furnishings and appliances thereof and shall investigate the persons responsible for the care of children therein. If, upon such examination of the facility and investigation of the persons responsible for care of children, the department is satisfied that the facility and the responsible persons reasonably meet standards prescribed for the type of child-care facility for which application is made, the department shall issue a license or an approval in the proper form, designating on said license or approval the type of child-care facility and, except for a child-placing agency, the number of children to be served at any one time. Application to operate a foster family home may be made to a licensed child-placing agency as defined in subdivision (7) of section 38-7-2, and such licensed child-placing agency may examine said foster family home and investigate persons therein responsible for the care of children, and, upon being satisfied that the foster family home and the responsible persons reasonably meet standards prescribed by the department, said licensed child-placing agency may issue an approval to said foster family home. (Acts 1971, 3rd Ex. Sess., No. 174, p. 4423, §4.)

§38-7-5. Same -- Issuance and term; temporary permits.

(a) Licenses or approvals shall be issued in such form and manner as prescribed by the department and are valid for two years from the date issued, unless revoked by the department or voluntarily surrendered by the licensee, or by the child-care facility designated on the notice of approval, provided, that

(1) Licenses or approvals for boarding homes are valid for one year from the date of issuance, unless revoked by the department, or by the licensed child-placing agency which issued the approval, or unless voluntarily surrendered by the licensee or by the child-care facility designated on the notice of approval;

(2) Approvals for free homes shall continue in effect until notice of disapproval is given by the department, or by the licensed child-placing agency which issued the approval, or until the child-care facility designated on the notice of approval voluntarily withdraws.

(b) The department may issue a six-month permit to a facility for child care to allow such facility reasonable time to become eligible for a full license; provided, however, that no such six-month permit shall be issued to a foster family home. (Acts 1971, 3rd Ex. Sess., No. 174, p. 4423, §5.)

§38-7-6. Same -- Renewal; reexamination; renewal of approval of boarding home.

(a) A licensed or approved child-care facility operating under this chapter shall apply for renewal of its license or approval, the application to be made to the department on forms prescribed by it; provided, however, that application for renewal of approval of a boarding home may be made to the licensed child-placing agency which issued the approval.

(b) The department shall reexamine every child-care facility for renewal of license or approval, including in that process, but not limited to, the examination of the premises and records of the facility and the persons responsible for the care of children as the department considers necessary to determine that minimum standards for licensing or approval continue to be met; provided, however, that in the case of a boarding home approved by a licensed child-placing agency, such reexamination may be made by said agency. If the department or the licensed child-placing agency, as the case may be, is satisfied that the facility continues to meet and maintain minimum standards which the department prescribes and publishes, the department shall renew the license or approval to operate the facility or the licensed child-placing agency shall renew its approval of a boarding home. (Acts 1971, 3rd Ex. Sess., No. 174, p. 4423, §6.)

§38-7-7. Same -- Department to establish minimum standards for licensing; factors to be considered; children in need of special treatment; department to offer consultation.

(a) The department shall prescribe and publish minimum standards for licensing and for approving all child-care facilities, as defined in this chapter. In establishing such standards the department shall seek the advice and assistance of persons representative of the various types of child-care facilities. The standards prescribed and published under this chapter shall include regulations pertaining to:

- (1) The operation and conduct of the child-care facility and the responsibility it assumes for child care;
- (2) The character, suitability and qualifications of the applicant and other persons directly responsible for the care and welfare of children served;
- (3) The general financial ability and competence of the applicant to provide necessary care for children and to maintain prescribed standards;
- (4) The number of individuals or staff required to insure adequate supervision and care of the children served;
- (5) The appropriateness, safety, cleanliness and general adequacy of the premises, including maintenance of adequate fire prevention and health standards conforming to state laws and municipal codes to provide for the physical comfort, care, well-being and safety of children served;
- (6) Provisions for food, clothing, educational opportunities, program equipment and individual supplies to assure the healthy physical and mental development of children served, consistent with the definitions contained in this chapter;
- (7) Maintenance of records pertaining to the admission, progress, health and discharge of children, and provisions for confidentiality of such records;
- (8) Filing of reports with the department; and
- (9) Discipline of children.

(b) If, in a facility for child care, there are children diagnosed as mentally ill, mentally retarded or physically handicapped who are determined to be in need of special mental treatment or of nursing care, or both mental treatment and nursing care, the department shall seek the advice and recommendation of the department of mental health or the state board of health, or of both, regarding the residential treatment and nursing care provided by the facility.

(c) The department, in applying standards prescribed and published, as herein provided, shall offer consultation through employed staff or other specified persons to assist applicants and licensees in meeting and maintaining minimum requirements for a license and to help them otherwise to achieve programs of excellence related to the care of children served. (Acts 1971, 3rd Ex. Sess., No. 174, p. 4423, §7.)

§38-7-8. Same -- Revocation or refusal to renew license -- Grounds.

The department may revoke or refuse to renew the license or the approval of any child-care facility or refuse to issue a full license to the holder of a six-month permit should the licensee or the child-care facility designated on the notice of approval or the holder of a six-month permit:

(1) Consistently fail to maintain standards prescribed and published by the department:

(2) Violate the provision of the license issued:

(3) Furnish or make any misleading or any false statements or report to the department;

(4) Refuse to submit to the department any reports or refuse to make available to the department any records required by the department in making investigation of the child-care facility for licensing purposes; provided, however, that the department shall not revoke or refuse to renew a license in such case unless it has made written demand on the person, firm or corporation operating the facility requesting such report or reports and such person, firm or corporation fails or refuses to submit such records for a period of 10 days;

(5) Fail or refuse to submit to an investigation by the department;

(6) Fail or refuse to admit authorized representatives of the department at any reasonable time for the purpose of investigation;

(7) Fail to provide, maintain, equip and keep in safe and sanitary condition premises established or used for child care as required under standards prescribed by the department, or as otherwise required by any law, regulation or ordinance applicable to such facility;

(8) Fail to maintain financial resources adequate for the satisfactory care of children served in regard to upkeep of premises and provisions for personal care, medical services, clothing, learning experience and other essentials in the proper care, rearing and training of children.

(Acts 1971, 3rd Ex. Sess., No. 174, p. 4423, §8.)

§38-7-9. Same -- Investigation of operation without license; report to attorney general for prosecution.

Whenever the department is advised or has reason to believe that any person, group of persons or corporation is operating a child-care facility without a license or an approval or a six-month permit, it may make an investigation to ascertain the fact. If it finds that the child-care facility is being operated or has operated without a license or an approval or a six-month permit, it shall report the results of its investigation to the attorney general and to the

appropriate district attorney for prosecution; provided, however, that the department may delay in making said report to the attorney general for a reasonable period of time, not to exceed 60 days, in order to give the person, group of persons or corporation operating the child-care facility reasonable opportunity to apply for a license or an approval or a six-month permit, and, therefore, to meet the standards prescribed in this chapter. (Acts 1971, 3rd Ex. Sess., No. 174, p. 4423, §10.)

§38-8-11. Advertisements.

A child-care facility shall keep and maintain such records as the department may prescribe pertaining to the admission, progress, health and discharge of children under the care of the facility. Records regarding children and facts learned about children and their relatives shall be kept confidential by the child-care facility and by the department. The department is authorized to promulgate rules and regulations governing the custody, use and disclosure of such records. Any person who has arrived at the age of 19 and who was placed by the department or by a licensed child-placing agency shall have the right to receive from the department or from the licensed child-placing agency information concerning his placement; except, that the name and address of a natural parent or relative shall be given by the department or the licensed child-placing agency only with the consent of said natural parent or relative. (Acts 1971, 3rd Ex. Sess., No. 174, p. 4423, §13.)

§38-7-14. Reports by child-care facility.

Every child-care facility shall make reports to the department on forms prescribed by the department and at times required by the department, giving information pertaining to the children under care and such other facts as the department may require. (Acts 1971, 3rd Ex. Sess., No. 174, p. 4423, §14.)

§38-7-15. Conditions precedent to bringing child into state for purposes of adoption or placement in child-care facility.

(a) No person or agency shall bring or send any child into the state of Alabama for the purpose of placing him or procuring his adoption or placing him in any child-care facility, as defined herein, without first obtaining the consent of the department. The department shall have the power to impose and enforce reasonable conditions precedent to the granting of such consent. Such conditions shall be for the purpose of providing the same care and protection for the child coming into the state of Alabama for placement or adoption as are afforded to a child who is born in the state of Alabama, and such conditions shall include the following:

(1) The department shall be authorized to designate an agency in another state from which said child is being sent, or in which said child's parents or guardian may be found, to interview said parent or parents or guardians, or at least one of them, for the purpose of obtaining social information, background information and medical information about said child;

(2) The department shall be authorized to receive such information from the designated agency in the other state;

(3) The department shall be authorized to receive the birth certificate of said child from the designated agency in the other state or from other appropriate agency in the other state;

(4) The department shall be authorized to make a thorough investigation of the proposed foster parent or parents, and their home, to determine whether or not they are

financially able, physically able and morally fit to have the care, supervision, training and control of said child;

(5) The department shall be authorized to make a thorough investigation of any child-care facility to which any child is being brought or sent to determine conformity to minimum standards prescribed herein for approval or licensing and to determine the suitability of such child-care facility for the care, supervision, training and control of said child;

(6) In case said child, subsequent to being brought into the state of Alabama, becomes dependent, neglected or delinquent prior to his adoption or becoming of legal age of majority, said child shall be subject to the laws of the state of Alabama as if he were a resident child of this state;

(7) The child will be placed in conformity with the rules and regulations of the department;

(8) the person with whom the child is placed shall be responsible for his proper care and training;

(9) The department shall have the right of visitation and supervision of the child and the home or the child-care facility in which he is placed until adoption becomes final or the child becomes 18 years of age;

(10) The department may, pursuant to the provisions of this chapter, prescribe the conditions of an agreement or contract with the designated out-of-state agency, when a child is brought into the state of Alabama.

(b) The person or agency receiving the child in Alabama shall report to the department at such reasonable times as the department may direct, as to the location and well-being of the child, so long as he shall remain within the state and until he shall have reached the age of 18 years or shall have been legally adopted. (Acts 1971, 3rd Ex. Sess., No. 174, p. 4423, §15.)

§38-7-16. Penalties; burden of proof of relationship.

Any person, group of persons, association or corporation who:

(1) Conducts, operates or acts as a child-care facility without a license, or a six-month permit or an approval to do so in violation of the provisions of this chapter;

(2) Makes materially false statements in order to obtain a license or permit;

(3) Fails to keep the records and make the reports provided under this chapter;

(4) Advertises any service not authorized by the license or permit held;

(5) Publishes any advertisement in violation of this chapter;

(6) Receives within this state any child in violation of section 38-7-15;

(7) Violates any other provision of this chapter or any reasonable rule or regulation adopted and published by the department for the enforcement of the provisions of this chapter, shall be guilty of a misdemeanor and shall be fined not less than \$100.00 nor more than \$1,000.00 or be imprisoned in the county jail not longer than one year, or both, and, in case of an association or corporation, imprisonment may be imposed upon its officers who knowingly participated in the violation.

In a prosecution under this chapter, a defendant who relies upon the relationship of any child to himself has the burden of proof as to that relationship. (Acts 1971, 3rd Ex. Sess., No. 174, p. 4423, §16.)

§38-7-17. Duty of district attorney to enforce chapter or prosecute violations.

It shall be the duty of every district attorney or assistant district attorney within the circuit, county or other territory for which he is elected or appointed to institute action for the enforcement of the provisions of this chapter or to prosecute action for the violation of the provisions of this chapter, or both. (Acts 1971, 3rd Ex. Sess., No. 174, p. 4423, §17.)

§38-7-18. Mandatory State Subsidized Child Day Care Services Programs

(a) There is hereby provided a mandatory state subsidized child day-care services program within the department of human resources for a minimum average of 6,500 eligible children at not less than the current department of human resources payment rates for a payment-to-provider cost of not less than \$8,600,000.00, annually, based on fiscal year ending September 30, 1987.

(b) There is hereby provided, in addition to any and all other appropriations to the department of human resources, a conditional appropriation of \$2,400,000.00 from the Alabama special educational trust fund for the fiscal year beginning October 1, 1987, to the department of human resources, to provide child day-care services for an additional 1,800 eligible children. The appropriation herein provided is conditional upon the condition of the Alabama special educational trust fund as ascertained by the governor, and shall be released only upon orders of the governor. (Acts 1987, No. 87-822, §§1, 2.)

§38-7-19 Powers of department as to transitional living facilities.

The Department of Human Resources may contract for utility services, purchase real or personal property, or enter into lease agreements for and may operate residences to be used as transitional living facilities to provide transitional living program services to an eligible child as defined in Section 38-7-2. (Acts 1993, 1st Ex. Sess., No. 93-904, p. 197, §2.)

ALABAMA LAW

Title 26, Code of Alabama 1975 Chapter 10, Alabama Adoption Code

Section 26-10A-1 Short title.

This chapter shall be known as and may be cited as the Alabama Adoption Code.

(Acts 1990, No. 90-554, p. 912, §1.)

Section 26-10A-2 Definitions.

The following words and phrases shall have the following meaning whenever used in this chapter except where the context clearly indicates a different meaning:

- (1) ABANDONMENT. A voluntary and intentional relinquishment of the custody of a minor by parent, or a withholding from the minor, without good cause or excuse, by the parent, of his presence, care, love, protection, maintenance, or the opportunity for the display of filial affection, or the failure to claim the rights of a parent, or the failure to perform the duties of a parent.
- (2) ADOPTEE. The person being adopted.
- (3) ADULT. A person who is 19 years of age or older or who by statute is otherwise deemed an adult.
- (4) CONSENT. Voluntarily agreeing to adoption.
- (5) FATHER. A male person who is the biological father of the minor or is treated by law as the father.
- (6) LICENSED CHILD PLACING AGENCY. Any adoption agency that is licensed under the provisions of the Alabama Child Care Act of 1971 or any adoption agency approved by the Department of Human Resources.
- (7) MINOR. A person under the age of 19 or a person who is not an adult under the law in the jurisdiction where he or she resides. The term includes a minor parent only.
- (8) MOTHER. A female person who is the biological mother of the minor or is treated by law as the mother.
- (9) PARENT. Natural or legal father or mother.
- (10) PARTIES IN INTEREST. The adoptive parents and the natural parents unless the rights of the natural parents have been terminated or relinquished for purposes of adoption then the agency that has custody becomes a party in interest. This phrase does not include the adoptee.
- (11) PRESUMED FATHER. Any male person as defined in the Alabama Uniform Parentage Act.
- (12) PUTATIVE FATHER. The alleged or reputed father.
- (13) RELINQUISHMENT. Giving up the physical custody of a minor for purpose of placement for adoption to a licensed child placing agency or the Department of Human Resources.

(14) SPECIAL NEEDS CHILD. A child as defined by the federal Adoption Assistance and Child Welfare Act of 1980.

(Acts 1990, No. 90-554, p. 912, §2; Act 99-435, p. 857, §1.)

Section 26-10A-3 Jurisdiction.

The probate court shall have original jurisdiction over proceedings brought under the chapter. If any party whose consent is required fails to consent or is unable to consent, the proceeding will be transferred to the court having jurisdiction over juvenile matters for the limited purpose of termination of parental rights. The provisions of this chapter shall be applicable to proceedings in the court having jurisdiction over juvenile matters.

(Acts 1990, No. 90-554, p. 912, §3.)

Section 26-10A-4 Venue.

All petitions may be filed in the probate court in the county in which:

- (1) The minor or adult resides or has a legal residence;
- (2) A petitioner resides, or is in military service; or
- (3) An office of any agency or institution operating under the laws of this state having guardianship or custody of a minor or an adult is located.

(Acts 1990, No. 90-554, p. 912, §4, Act 98-101, p. 118, §1.)

Section 26-10A-5 Who may adopt.

(a) Any adult person or husband and wife jointly who are adults may petition the court to adopt a minor.

(1) No rule or regulation of the Department of Human Resources shall prevent an adoption by a person solely because the person is employed outside the home, provided however, the Department of Human Resources may exercise sound discretion in requiring the person to remain in the home with a minor for a reasonable period of time when a particular minor requires the presence of that person to ensure his or her adjustment. Provided, however, the reasonable period of time shall not exceed 60 consecutive calendar days.

(2) No rule or regulation of the Department of Human Resources or any agency shall prevent an adoption by a single person solely because such person is single or shall prevent an adoption solely because such person is of a certain age.

(3) Provided however, in cases, where one who purports to be the biological father marries the biological mother, on petition of the parties, the court shall order paternity tests to determine the true biological father. If the court determines by substantial evidence that the biological father is the man married to the biological mother, then the biological father shall be allowed to adopt the child without the consent of the man who was married to the biological mother at the time of the conception or birth of the child, or both, when the court finds the adoption to be in the best interest of the child.

(b) Any adult may petition the court to adopt another adult as provided in this chapter.

(Acts 1990, No. 90-554, p. 912, §5, Act 98-101, p. 118, §1.)

Section 26-10A-6 Who may be adopted.

The following persons may be adopted:

- (1) A minor.
- (2) An adult under any one of the following conditions:
 - a. He or she is totally and permanently disabled.
 - b. He or she is determined to be mentally retarded.
 - c. He or she consents in writing to be adopted and is related in any degree of kinship, as defined by the intestacy laws of Alabama, or is a stepchild by marriage.
 - d. He or she consents in writing to be adopted by an adult man and woman who are husband and wife.

(Acts 1990, No. 90-554, p. 912, §6, Act 98-101, p. 118, §1; Act 2004-528, §1.)

Section 26-10A-7 Persons whose consents or relinquishment are required.

(a) Consent to the petitioner's adoption or relinquishment for adoption to the Department of Human Resources or a licensed child-placing agency shall be required of the following:

- (1) The adoptee, if 14 years of age or older, except where the court finds that the adoptee does not have the mental capacity to give consent;
- (2) The adoptee's mother;
- (3) The adoptee's presumed father, regardless of paternity, if:
 - a. He and the adoptee's mother are or have been married to each other and the adoptee was born during the marriage, or within 300 days after the marriage was terminated by death, annulment, declaration of invalidity, or divorce, or after a decree of separation was entered by a court; or
 - b. Before the adoptee's birth, he and the adoptee's mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and,
 1. If the attempted marriage could be declared invalid only by a court, the adoptee was born during the attempted marriage, or within 300 days after its termination by death, annulment, declaration or invalidity, or divorce; or
 2. If the attempted marriage is invalid without a court order, the adoptee was born within 300 days after the termination of cohabitation; or
 - c. After the adoptee's birth, he and the adoptee's mother have married, or attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and,
 1. With his knowledge or consent, he was named as the adoptee's father on the adoptee's birth certificate; or
 2. He is obligated to support the adoptee pursuant to a written voluntary promise or agreement or by court order; or

d. He received the adoptee into his home and openly held out the adoptee as his own child;

(4) The agency to which the adoptee has been relinquished or which holds permanent custody and which has placed the adoptee for adoption, except that the court may grant the adoption without the consent of the agency if the adoption is in the best interests of the adoptee and there is a finding that the agency has unreasonably withheld its consent; and

(5) The putative father if made known by the mother or is otherwise made known to the court provided he complies with Section 26-10C-1 and he responds within 30 days to the notice he receives under Section 26-10A-17(a)(10).

(b) A petition to adopt an adult may be granted only if written consent to adopt has been executed by the adult seeking to adopt and his or her spouse or by the guardian or conservator of the adult sought to be adopted pursuant to the requirements of Sections 26-10A-6 and 26-10A-11.

(Acts 1990, No. 90-554, p. 912, §7; Act 98-101, p. 118, §1; Act 2002-417, p. 1061, §1.)

Section 26-10A-8 Consent or relinquishment by a minor parent.

(a) Prior to a minor parent giving consent a guardian ad litem must be appointed to represent the interests of a minor parent whose consent is required. Any minor, 14 years of age and beyond, can nominate a guardian ad litem either prior to the birth of the baby or thereafter.

(b) A consent or relinquishment executed by a parent who is a minor shall not be subject to revocation by reason of such minority.

(c) A minor father may give his implied consent by his actions. If a court finds by conclusive evidence that a minor father has given implied consent to the adoption, notice and the appointment of a guardian ad litem shall not be necessary.

(Acts 1990, No. 90-554, p. 912, §8; Act 99-435, p. 857, §1.)

Section 26-10A-9 Implied consent or relinquishment.

(a) A consent or relinquishment required by Section 26-10A-7 may be implied by any of the following acts of a parent:

(1) Abandonment of the adoptee. Abandonment includes, but is not limited to, the failure of the father, with reasonable knowledge of the pregnancy, to offer financial and/or emotional support for a period of six months prior to the birth.

(2) Leaving the adoptee without provision for his or her identification for a period of 30 days.

(3) Knowingly leaving the adoptee with others without provision for support and without communication, or not otherwise maintaining a significant parental relationship with the adoptee for a period of six months.

(4) Receiving notification of the pendency of the adoption proceedings under Section 26-10A-17 and failing to answer or otherwise respond to the petition within 30 days.

(5) Failing to comply with Section 26-10C-1.

(b) Implied consent under subsection (a) may not be withdrawn by any person.

(Acts 1990, No. 90-554, p. 912, §9; Act 99-435, p. 857, §1; Act 2002-417, p. 1061, §1.)

Section 26-10A-10 Persons whose consents or relinquishments are not required.

Notwithstanding the provisions of Section 26-10A-7, the consent or relinquishment of the following persons shall not be required for an adoption:

- (1) A parent whose rights with reference to the adoptee have been terminated by operation of law in accordance with the Alabama Child Protection Act, Sections 26-18-1 through 26-18-10;
- (2) A parent who has been adjudged incompetent pursuant to law or a parent whom the court finds to be mentally incapable of consenting or relinquishing and whose mental disability is likely to continue for so long a period that it would be detrimental to the adoptee to delay adoption until restoration of the parent's competency or capacity. The court must appoint independent counsel or a guardian ad litem for an incompetent parent for whom there has been no such prior appointment;
- (3) A parent who has relinquished his or her minor child to the department of human resources or a licensed child placing agency for an adoption;
- (4) A deceased parent or one who is presumed to be deceased under Alabama law;
- (5) An alleged father who has signed a written statement denying paternity; or
- (6) The natural father where the natural mother indicates the natural father is unknown, unless the natural father is otherwise made known to the court.

(Acts 1990, No. 90-554, p. 912, §10.)

Section 26-10A-11 Consent or relinquishment.

(a) A consent or relinquishment shall be in writing, signed by the person consenting or relinquishing, and shall state the following:

- (1) The date, place, and time of execution.
- (2) The date of birth or if prior to birth expected date of birth of the adoptee and any names by which the adoptee has been known.
- (3) The relationship of the person consenting or relinquishing to the adoptee.
- (4) The name of each petitioner, unless (i) the document is relinquishment of the adoptee to an agency, or (ii) the consent contains a statement that the person executing the consent knows that he or she has a right to know the identity of each petitioner but voluntarily waives this right.
- (5) That the person executing the document is voluntarily and unequivocally consenting to the adoption of the named adoptee.
- (6) That by signing the document and subsequent court order to ratify the consent, the person executing the document understands that he or she will forfeit all rights and obligations; that he or she understands the consent or relinquishment and executes it freely and voluntarily.
- (7) That the person executing the document understands that the consent may be irrevocable, and should not execute it if he or she needs or desires psychological or legal advice, guidance, or counseling.

(8) The address of the court in which the petition for adoption has been or will be filed, if known, and if not known, the name and address of the agency, the petitioners or their attorney on whom notice of the withdrawal of consent may be served.

(9) In the case of relinquishment, the name and address of the agency to which the adoptee has been relinquished.

(10) That the person executing the same has received or been offered a copy of the consent or relinquishment.

(11) That the person executing a relinquishment waives further notice of the adoption proceeding.

(12) That the person executing a consent waives further notice of the adoption proceedings, unless there is a contest or appeal of the adoption proceeding.

(b) When the person sought to be adopted is an adult, only the sworn, written consent of the adult person sought to be adopted shall be required and no order of reference or any home studies need be issued. If the adult person to be adopted has been adjudicated incompetent, the written consent of the adult person's guardian or conservator shall be required. If the adult person is without a spouse, guardian, or conservator and the court has reason to believe that the adult person is incompetent to give consent, the court shall appoint a guardian ad litem who shall investigate the adult person's circumstances and that guardian ad litem shall give or withhold consent. The guardian ad litem shall file a written report stating the basis for the decision and the court shall afford a hearing to all parties to present evidence as to the best interest of the adult person, and if the court determines upon clear and convincing evidence that the decision to withhold consent by the guardian ad litem is arbitrary and is not in the best interests of the incompetent adult person, it may proceed to make any other orders it deems necessary for the adult person's welfare, including granting the petition for adoption.

(Acts 1990, No. 90-554, p. 912, §11; Acts 98-101, p. 118, §1.)

Section 26-10A-12 Persons who may take consent or relinquishments; forms.

(a) A consent of the natural mother taken prior to the birth of a child shall be signed or confirmed before a judge of probate. At the time of taking the consent the judge shall explain to the consenting parent the legal effect of signing the document and the time limits and procedures for withdrawal of the consent and shall provide the parent with a form for withdrawing the consent in accordance with the requirements of Sections 26-10A-13 and 26-10A-14.

(b) All other pre-birth or post-birth consents or relinquishments shall be signed or confirmed before:

(1) A judge or clerk of any court which has jurisdiction over adoption proceedings, or a public officer appointed by such judge for the purpose of taking consents; or

(2) A person appointed to take consents who is appointed by any agency which is authorized to conduct investigations or home studies provided by Section 26-10A-19, or, if the consent is taken out of state, by a person appointed to take consents by any agency which is authorized by that state's law to conduct investigations and home studies for adoptions; or

(3) A notary public.

(c) Except as otherwise provided in subsection (d), the form for the consent or relinquishment or the withdrawal of the consent or relinquishment shall state in substantially the same form as follows:

CONSENT OR RELINQUISHMENT OF MINOR FOR ADOPTION

THE STATE OF ALABAMA)

_____ COUNTY)

KNOW ALL MEN BY THESE PRESENT, that:

1. I, _____
(name of person consenting or relinquishing)

the _____ of
(parents, legal guardian, agency)

(a) a minor _____
(state any names by which the minor has been known)

born _____, ____.

(or)

(b) an unborn child whose expected date of birth is
_____, do hereby:

(a) consent to the adoption of the said minor by

(name of petitioners, unless identity waived)

(or)

(b) relinquish the said minor for the purpose of adoption to

(name and address of agency)

in order that said minor may have all the privileges which may be accorded to (him) (her) by the laws of Alabama upon (his) (her) legal adoption;

2. I am executing this document voluntarily and unequivocally thereby [consenting to the adoption of] [relinquishing] said minor;

3. I understand that by signing this document and the subsequent court order to ratify the consent, I will forfeit all rights and obligations and that I understand the [consent to the adoption] [relinquishment] and execute it freely and voluntarily;

4. I understand that the [consent to the adoption] [relinquishment] may be irrevocable, and I should not execute it if I need or desire psychological or legal advice, guidance or counseling;

5. I have received or been offered a copy of this document;

6. I waive the right to know the identity of each petitioner who petitions to adopt the said minor child;

7. [I waive further notice of the adoption proceedings by the execution of this relinquishment to the named agency]; (or) [I waive further notice of the adoption proceedings by the execution of this consent, unless there is a contest or appeal of the adoption proceedings];

8. I understand that notice of withdrawal of [consent] [relinquishment] must be mailed to

[_____,
(county where consent or petition is filed if known)

Probate Court at the following address _____]

or [_____
(name and address of agency with whom document is filed or the

_____)]
petitioners or their attorney if county where petition is filed is unknown)

and that such withdrawal must be mailed within five days after the birth of said minor or the execution of this document whichever comes last;

9. I do hereby request that the judge of probate make all such orders and decrees as may be necessary or proper to legally effectuate said adoption.

Given under my hand at ____ o'clock, _____ day of _____, __, at

(address of filing)

_____(SEAL)

Affiant's Signature

"I _____, sign my name to this instrument this ____ day of _____, __, and being first duly sworn, do hereby declare to the undersigned authority that I execute it as my free and voluntary act for the purposes therein expressed, and that I am _____ years of age or older, of sound mind, and under no constraint or undue influence."

_____(SEAL)

Affiant's Signature

STATE OF ALABAMA)
COUNTY OF _____)

Subscribed, sworn to and acknowledged before me by _____,
this _____ day of _____, __.

SEAL

(Signed) _____

(Official Capacity of Officer)

I acknowledge receipt of two copies of this document.

_____(SEAL)

Date

I _____, on this _____ day of _____, __, at
(Affiant)

_____ a.m./p.m. in the presence of the two witnesses whose
(time of day)

signatures and addresses are subscribed below, hereby withdraw the adoption [consent]
[relinquishment] previously signed by me.

Witness

Affiant's Signature

Address

Witness

Address

(d) The form for the consent or relinquishment or the withdrawal of consent or
relinquishment for an adult, adopted or sought to be adopted, shall be developed by the
Administrative Office of Courts.

(Acts 1990, No. 90-554, p. 912, §12; Act 98-101, p. 118, §1.)

Section 26-10A-13 Time of consent or relinquishment; filing with court.

(a) A consent or relinquishment may be taken at any time, except that once signed or
confirmed, may be withdrawn within five days after birth or within five days after signing of the
consent or relinquishment, whichever comes last.

(b) Consent or relinquishment can be withdrawn if the court finds that the withdrawal is
reasonable under the circumstances and consistent with the best interest of the child within 14
days after the birth of the child or within 14 days after signing of the consent or relinquishment,
whichever comes last.

(c) All consents or relinquishments required by this act shall be filed with the court in which
the petition for adoption is pending before the final decree of adoption is entered.

(Acts 1990, No. 90-554, p. 912, §13.)

Section 26-10A-14 Withdrawal of consent or relinquishment.

(a) The consent or relinquishment, once signed or confirmed, may not be withdrawn except:

(1) As provided in Section 26-10A-13; or

(2) At any time until the final decree upon a showing that the consent or
relinquishment was obtained by fraud, duress, mistake, or undue influence on the part of
a petitioner or his agent or the agency to whom or for whose benefit it was given. After
one year from the date of final decree of adoption is entered, a consent or
relinquishment may not be challenged on any ground, except in cases where the
adoptee has been kidnapped.

(3) Upon dismissal of the adoption after a contested hearing as provided in Section
26-10A-24.

(b) The withdrawal of consent or relinquishment as provided in Section 26-10A-13(a) shall be effected by the affiant signing and dating the withdrawal form provided pursuant to Section 26-10A-12(c) or other written withdrawal of consent containing the information set forth in Section 26-10A-12(c), and by delivering the withdrawal to the court or having the withdrawal postmarked within five days of the child's birth or of signing the consent or relinquishment, whichever comes last.

(c) The petition to withdraw consent or relinquishment must be in writing, signed by the person seeking to withdraw the consent or relinquishment, dated, and signed by two witnesses.

(d) In adjudicating a petition to withdraw a consent or relinquishment, the person seeking to withdraw the consent or relinquishment shall establish the facts necessary to withdraw the consent or relinquishment by a preponderance of the evidence. The court shall not apply any presumption or preference in favor of the natural parents in reviewing an action brought under this section.

(e) If the court directs that the consent or relinquishment be withdrawn, the court shall order the minor restored to the custody of his or her parent or parents, the Department of Human Resources or a licensed child placing agency; otherwise, the court shall deny the withdrawal and declare that the consent or relinquishment is final and binding. Any order made by the court upon a petition to withdraw consent or relinquishment under this section shall be deemed a final order for the purpose of filing an appeal under Section 26-10A-26.

(Acts 1990, No. 90-554, p. 912, §14; Act 2002-417, p. 1061, §1.)

Section 26-10A-15 Surrender of custody of minor under age of majority.

(a) No health facility shall surrender the physical custody of an adoptee to any person other than the Department of Human Resources, a licensed child placing agency, parent, relative by blood or marriage, or person having legal custody, unless such surrender is authorized in a writing executed after the birth of the adoptee by one of the adoptee's parents or agency or the person having legal custody of the adoptee.

(b) A health facility shall report to the Department of Human Resources on forms supplied by the department, the name and address of any person and, in the case of a person acting as an agent for an organization, the name and address of the organization to whose physical custody an adoptee is surrendered. Such report shall be transmitted to the department within 48 hours from the surrendering of custody.

(c) No adoptee shall be placed with the petitioners prior to the completion of a pre-placement investigation except for good cause shown and with written notice immediately given to the court, and to the county department of human resources.

(Acts 1990, No. 90-554, p. 912, §15.)

Section 26-10A-16 Petition.

(a) A petition for adoption shall be filed with the clerk of the court within 30 days after the minor is placed with the prospective adoptive parent or parents for purposes of adoption unless the minor is in custody of the Department of Human Resources or a licensed child placing agency except that a petition for good cause shown may be filed beyond the 30-day period. The petition shall be signed, and verified by each petitioner, and shall allege:

(1) The full name, age, and place of residence of each petitioner and, if married, the place and date of marriage;

- (2) The date and place of birth of the adoptee, except in the case of abandonment;
 - (3) The birth name of the adoptee, any other names by which the adoptee has been known, and the adoptee's proposed new name;
 - (4) Where the adoptee is residing at the time of the filing of the petition, and if the minor is not in the custody of a petitioner, when he, she, or they intend to acquire custody;
 - (5) That each petitioner desires to establish a parent and child relationship between himself or herself and the adoptee and that he or she is a fit and proper person able to care for and provide for the adoptee's welfare;
 - (6) The existence and nature of any prior court orders known to the petitioner which affect the custody, visitation, or access to the adoptee;
 - (7) The relationship, if any, of each petitioner to the adoptee;
 - (8) The name and address of the placing agency, if any; and
 - (9) The names and addresses of all persons known to the petitioner at the time of filing from whom consents or relinquishment to the adoption are required;
- (b) The caption of a petition for adoption shall be styled "In the Matter of the Adoption Petition of _____." Each petitioner shall be designated in the caption.
- (c) The petition shall be accompanied by a copy of the child's birth certificate or affidavit stating that application for a birth certificate has been made except in cases where the child has been abandoned.

(Acts 1990, No. 90-554, p. 912, §16.)

Section 26-10A-17 Notice of petition.

- (a) Unless service has been previously waived, notice of pendency of the adoption proceeding shall be served by the petitioner on:
- (1) Any person, agency, or institution whose consent or relinquishment is required by Section 26-10A-7, unless service has been previously waived or consent has been implied.
 - (2) The legally appointed custodian or guardian of the adoptee.
 - (3) The spouse of any petitioner who has not joined in the petition.
 - (4) The spouse of the adoptee.
 - (5) The surviving parent or parents of a deceased parent of the adoptee.
 - (6) Any person known to the petitioners as having physical custody, excluding licensed foster care or other private licensed agencies or having visitation rights with the adoptee under an existing court order.
 - (7) The agency or individual authorized to investigate the adoption under Section 26-10A-19.
 - (8) Any other person designated by the court.
 - (9) The Department of Human Resources.

- (10) The father and putative father of the adoptee if made known by the mother or otherwise known by the court unless the court finds that the father or putative father has given implied consent to the adoption, as defined in Section 26-10A-9.
- (b) The notice shall specifically state that the person served must respond to the petitioner within 30 days if he or she intends to contest the adoption. A copy of the petition for adoption shall be delivered to those individuals or agencies in subdivisions (a)(2) through (a)(10). Any notice required by this chapter may be served on a natural parent prior to birth.
- (c) Service of the notice shall be made in the following manner:
- (1) Service of process shall be made in accordance with the Alabama Rules of Civil Procedure except as otherwise provided by the Alabama Rules of Juvenile Procedure. If the identity or whereabouts of the parent is unknown, or if one parent fails or refuses to disclose the identity or whereabouts of the other parent, the court shall then issue an order providing for service by publication, by posting, or by any other substituted service.
- (2) As to the agency or individual referred to in subdivisions (a)(7) and (a)(9) above, notice shall be by certified mail.
- (3) As to any other person for whom notice is required under subsection (a) of this section, service by certified mail, return receipt requested, shall be sufficient. If such service cannot be completed after two attempts, the court shall issue an order providing for service by publication, by posting, or by any other substituted service.
- (d) The notice required by this section may be waived in writing by the person entitled to receive notice.
- (e) Proof of service of the notice on all persons for whom notice is required by this section must be filed with the court before the adjudicational hearing, provided in Section 26-10A-24.
- (Acts 1990, No. 90-554, p. 912, §17; Act 99-435, p. 857, §1; Act 2002-417, p. 1061, §1.)***

Section 26-10A-18 Custody pending final decree.

Once a petitioner has received the adoptee into his or her home for the purposes of adoption and a petition for adoption has been filed, an interlocutory decree shall be entered delegating to the petitioner (1) custody, except custody shall be retained by the Department of Human Resources or the licensed child placing agency which held custody at the time of the placement until the entry of the final decree and (2) the responsibility for the care, maintenance, and support of the adoptee, including any necessary medical or surgical treatment, pending further order of the court. This interlocutory decree shall not stop the running of time periods prescribed in Section 26-10A-9.

(Acts 1990, No. 90-554, p. 912, §18; Act 2002-417, p. 1061, §1.)

Section 26-10A-19 Investigation.

- (a) A pre-placement investigation shall be made to determine the suitability of each petitioner and the home in which the adoptee will be placed. The investigation shall include a criminal background investigation and any other circumstances which might be relevant to the placement of an adoptee with the petitioners. A copy of the pre-placement investigation shall be filed with the court when the petition for adoption is filed.
- (b) An individual or couple may initiate a pre-placement investigation by request directly through the Department of Human Resources or a licensed child-placing agency or by filing a

request with the probate court. The court may appoint any agency or individual qualified under subsection (d) to perform the pre-placement investigation. Upon completion of the investigation, a copy of the report shall be sent to the petitioners. The report is to be filed with the court at the time of the filing of the petition for adoption.

(c) Unless a pre-placement investigation has been performed within 24 months of the petition or an investigation is dispensed with by court order for good cause shown on the record, no decree for the adoption of any adoptee shall be entered until a full post-placement investigation ordered by the court has been made concerning:

- (1) The suitability of each petitioner, and his, her, or their home for the adoptee;
- (2) Why the natural parents, if living, desire to be relieved of the care, support and guardianship of such minor;
- (3) Whether the natural parents have abandoned such minor or are otherwise unsuited to have its custody;
- (4) Any orders, judgments, or decrees affecting the adoptee or any children of the petitioner;
- (5) Any property owned by the adoptee;
- (6) The medical histories, both physical and mental, of the adoptee and the biological parents. This history shall be provided to the petitioner in writing before the decree is entered;
- (7) Criminal background investigations;
- (8) The costs and expenses connected with the adoption; and
- (9) Any other circumstances which may be relevant to the placement of the adoptee with the petitioners.

(d) (1) A pre-placement investigation or a post-placement investigation must be performed by one of the following:

- a. The Department of Human Resources;
- b. A licensed child placing agency;
- c. An individual or agency licensed by the department to perform investigations; or
- d. An individual appointed by the court who is a social worker licensed by the State Board of Social Work Examiners or a social worker II or above who is under the state merit system who is also certified by the State Board of Social Work Examiners for private independent practice in the social casework specialty, as provided for in Section 34-30-3.

(2) Notwithstanding subdivision (d)(1), the court on its own motion may order the post-placement investigation be performed by an agency or individual other than the agency placing the adoptee, when the court has cause to believe the investigation is insufficient.

(e) In every adoption proceeding, after a child has been placed in the home, in the post-placement investigation an investigator must observe the adoptee and interview the petitioner in their home as soon as possible after notice of the placement but in any event within 45 days after the placement.

(f) The investigator shall complete and file his or her written report with the court within 60 days from receipt of notice of the proceeding and shall deliver a copy of the report to the petitioner's attorney or to each petitioner if he or she is appearing pro se. The investigation shall include a verification of all allegations of the petition. The report shall include sufficient facts for the court to determine whether there has been compliance with consent or relinquishment provisions of this chapter. The post-placement investigation shall include all of the information enumerated within subdivisions (c)(1) through (c)(9) that was not obtained in the pre-placement investigation required under subsection (a).

(g) Upon a showing of a good cause and after notice to the petitioners, the court may grant extensions of time to the investigator to file his or her investigation.

(h) Notwithstanding this section no investigations shall be required for those adoptions under Sections 26-10A-27 and 26-10A-28.

(i) When the investigation has been conducted, the investigatory report shall not be conclusive but may be considered along with other evidence.

(Acts 1990, No. 90-554, p. 912, §19.)

Section 26-10A-20 Removal of adoptee from county.

After the petitioner has received the adoptee into his or her home, the adoptee shall not be removed from the county in which the petitioner resides until the final decree has been issued for a period of longer than 15 consecutive days unless notice is given to the investigating agency or person.

(Acts 1990, No. 90-554, p. 912, §20.)

Section 26-10A-21 Related proceedings.

If, at any time during the pendency of the adoption proceeding, it is determined that any other custody action concerning the adoptee is pending in the courts of this state or any other state or country, any party to the adoption proceeding, or the court on its own motion, may move to stay such adoption proceeding until a determination has been made by an appropriate court with jurisdiction pursuant to the provisions of the Uniform Child Custody Jurisdiction Act (UCCJA) or the Parental Kidnapping Prevention Act (PKPA). The adoption may be transferred and consolidated with a custody proceeding pending in any court in this state.

(Acts 1990, No. 90-554, p. 912, §21; Act 99-435, p. 857, §1.)

Section 26-10A-22 Attorney participation and appointment of attorney for the adoptee or other party.

(a) In making adoption arrangements, potential adopting parents and birth parents may obtain counsel to provide legal advice and assistance.

(b) Upon the motion of any party, or upon the court's own motion, before or after the filing of petition for adoption the court may appoint a guardian ad litem for the adoptee, or for any incompetent or minor who is a party to the proceeding or who would be a party to the proceeding. In the event of a contested adoption, a guardian ad litem shall be appointed. The fees of a guardian ad litem shall be assessed as court costs.

(Acts 1990, No. 90-554, p. 912, §22.)

Section 26-10A-23 Fees and charges.

- (a) No person, organization, group, agency or any legal entity may accept any fee whatsoever for bringing the adopting parent or parents together with the adoptee or the natural parents. A violation of this section shall be punished under Section 26-10A-33.
- (b) Prior to payment, the petitioners must file with the court a full accounting of all charges for expenses, fees or services they or persons acting on their behalf will be paying relating to the adoption. Payment may be made only with court approval except that fees may be placed in an escrow account prior to court approval. The court may not refuse to approve a fee for documented services on the sole basis that a child has not been placed. The court shall approve all reasonable fees and expenses unless determined by the court to be unreasonable based upon specific written findings of fact.
- (c) The petitioner must file a sworn statement that is a full accounting of all disbursements paid in the adoption.
- (d) Under penalty of perjury, the adoptive parents and the parent or parents surrendering the minor for adoption shall, prior to the entry of the final adoption order, sign affidavits stating that no moneys or other things of value have been paid or received for giving the minor up for adoption. In addition to any penalties for perjury, the payment or receipt of money as referred to herein shall be punished as set forth in section 26-10A-33.

(Acts 1990, No. 90-554, p. 912, §23.)

Section 26-10A-24 Contested hearing.

- (a) Whenever a motion contesting the adoption is filed, the court shall set the matter for a contested hearing to determine:
 - (1) Whether the best interests of the adoptee will be served by the adoption.
 - (2) Whether the adoptee is a person capable of being adopted by the petitioner in accordance with the requirements of this chapter.
 - (3) Whether an actual or implied consent or relinquishment to the adoption is valid.
 - (4) Whether a consent or relinquishment may be withdrawn.
- (b) The court shall give notice of the contested hearing by certified mail to all parties who have appeared before the court. The moving party and each petitioner shall be present at the contested hearing. The guardian ad litem shall appear and represent the interests of the adoptee.
- (c) The court may continue the hearing from time to time to permit notice to all parties, or to permit further discovery, observation, investigation, or consideration of any fact or circumstances affecting the granting of the adoption petition. The court may order the investigating officer, appointed under Section 26-10A-19, to investigate the allegations set forth in the motion for a contested hearing or the whereabouts of any person entitled to notice of the proceeding.
- (d) After hearing evidence at a contested hearing, the court shall dismiss the adoption proceeding if the court finds:
 - (1) That the adoption is not in the best interests of the adoptee.
 - (2) That a petitioner is not capable of adopting the adoptee.
 - (3) That a necessary consent cannot be obtained or is invalid.

- (4) That a necessary consent may be withdrawn. Otherwise the court shall deny the motion of the contesting party.
- (e) On motion of either party or of the court, a contested adoption hearing may be transferred to the court having jurisdiction over juvenile matters.
- (f) All references to the names of the parties in the proceedings shall be by initial only.
- (g) Where the contested hearing is held in the probate court the judge may, upon completion of the contested hearing, immediately proceed with the dispositional hearing as provided in Section 26-10A-25.
- (h) Where there is a contested case hearing, if the adoption is denied, then the probate court or court of competent jurisdiction, unless just cause is shown otherwise by the contestant, shall issue an order for reimbursement to the petitioner or petitioners for adoption for all medical and living expenses incidental to the care and well-being of the minor child for the time the child resided with the petitioner or petitioners for adoption.
- (i) Where there is a contested hearing and the contest fails, then the probate court or court of competent jurisdiction, unless just cause is shown otherwise by the contestant, shall issue an order for reimbursement to the petitioner or petitioners for adoption for all legal costs incurred which are incidental to the contest.

(Acts 1990, No. 90-554, p. 912, §24; Act 99-435, p. 857, §1.)

Section 26-10A-25 Final decree; dispositional hearing.

- (a) When the pre-placement investigation has been completed and approved or the investigation has been waived for good cause shown, the petition for adoption shall be set for a dispositional hearing as soon as possible or no later than 90 days after the filing of the petition. When there has not been a pre-placement investigation or the investigation has not been waived for good cause shown or when the adoptee is a special needs child, the petition for adoption shall be set for a dispositional hearing as soon as possible or no later than 120 days after the filing of the petition. Upon good cause shown, the court may extend the time for the dispositional hearing and entry of the final decree.
- (b) At the dispositional hearing, the court shall grant a final decree of adoption if it finds on clear and convincing evidence that:
 - (1) The adoptee has been in the actual physical custody of the petitioners for a period of 60 days, unless for good cause shown, this requirement is waived by the court;
 - (2) All necessary consents, relinquishments, terminations or waivers have been obtained and, if appropriate, have been filed with the court;
 - (3) Service of the notice of pendency of the adoption proceeding has been made or dispensed with as to all persons entitled to receive notice under Section 26-10A-17;
 - (4) All contests brought under Section 26-10A-24 have been resolved in favor of the petitioner;
 - (5) That each petitioner is a suitable adopting parent and desires to establish a parent and child relationship between himself or herself and the adoptee;
 - (6) That the best interests of the adoptee are served by the adoption; and
 - (7) All other requirements of this chapter have been met.

(c) The court shall enter its finding in a written decree which shall also include the new name of the adoptee, and shall not include any other name by which the adoptee has been known or the names of the natural or presumed parents. The final decree shall further order that from the date of the decree, the adoptee shall be the child of the petitioners, and that the adoptee shall be accorded the status set forth in Section 26-10A-29.

(d) A final decree of adoption may not be collaterally attacked, except in cases of fraud or where the adoptee has been kidnapped, after the expiration of one year from the entry of the final decree and after all appeals, if any.

(Acts 1990, No. 90-554, p. 912, §25.)

Section 26-10A-26 Appeals.

(a) Appeals from any final decree of adoption shall be taken to the Alabama Court of Civil Appeals and filed within 14 days from the final decree.

(b) An appeal from any final order or decree rendered under this chapter shall have priority in all courts and shall have precedence over all other matters, except for other matters which have been given priority by specific statutory provision or rule of court. The trial court may enter further orders concerning the custody of the adoptee pending appeal.

(c) If an order, judgment, or decree rendered under this chapter is appealed, the party who files the appeal shall cause notice of the appeal to be transmitted to all persons entitled to receive notice pursuant to Section 26-10A-17, except for persons for whom consent or relinquishment has been implied under Section 26-10A-9 or whose consent or relinquishment is not required under Section 26-10A-10. Such notice of appeal shall set forth the pendency of the appeal and the right of interested parties to be heard. The notice shall not identify by name the party filing such appeal, unless the appellant is unrepresented, but shall specify the identity of the court in which the appeal is pending, the docket number of the petition, the general nature of the appeal, and the name, address and telephone number of the attorney who has filed the petition. The caption of an appeal shall show only the initials of the adoptee's birth name. Only the initials of the natural parents and the petitioner shall be indicated in all pleadings and briefs.

(Acts 1990, No. 90-554, p. 912, §26.)

Section 26-10A-27 Stepparent adoptions.

Any person may adopt his or her spouse's child according to the provisions of this chapter, except that:

(1) Before the filing of the petition for adoption, the adoptee must have resided for a period of one year with the petitioner, unless this filing provision is waived by the court for good cause shown;

(2) No investigation under Section 26-10A-19 shall occur unless otherwise directed by the court, and

(3) No report of fees and charges under Section 26-10A-23 shall be made unless ordered by the court.

(Acts 1990, No. 90-554, p. 912, §27.)

Section 26-10A-28 Adoption by other relatives.

A grandfather, a grandmother, great-grandfather, great-grandmother, great-uncle, great-aunt, a brother, or a half-brother, a sister, a half-sister, an aunt or an uncle of the first degree and their respective spouses, if any may adopt a minor grandchild, a minor brother, a minor half-brother, a minor sister, a minor half-sister, a minor nephew, a minor niece, a minor great-grandchild, a minor great niece or a minor great nephew, according to the provisions of this chapter, except that:

- (1) Before the filing of the petition for adoption, the adoptee must have resided for a period of one year with the petitioner, unless this filing provision is waived by the court for good cause shown;
- (2) No investigation under Section 26-10A-19 shall occur unless otherwise directed by the court; and
- (3) No report of fees and charges under Section 26-10A-23 shall be made unless ordered by the court.

(Acts 1990, No. 90-554, p. 912, §28.)

Section 26-10A-29 Name and status of adoptee.

- (a) The adoptee shall take the name designated by the petitioner. After adoption, the adoptee shall be treated as the natural child of the adopting parent or parents and shall have all rights and be subject to all of the duties arising from that relation, including the right of inheritance.
- (b) Upon the final decree of adoption, the natural parents of the adoptee, except for a natural parent who is the spouse of the adopting parent are relieved of all parental responsibility for the adoptee and will have no parental rights over the adoptee.

(Acts 1990, No. 90-554, p. 912, §29.)

Section 26-10A-30 Grandparent visitation.

Post-adoption visitation rights for the natural grandparents of the adoptee may be granted when the adoptee is adopted by a stepparent, a grandfather, a grandmother, a brother, a half-brother, a sister, a half-sister, an aunt or an uncle and their respective spouses, if any. Such visitation rights may be maintained or granted at the discretion of the court at any time prior to or after the final order of adoption is entered upon petition by the natural grandparents, if it is in the best interest of the child.

(Acts 1990, No. 90-554, p. 912, §29.1.)

Section 26-10A-31 Confidentiality of records, hearing; parties.

- (a) After the petition is filed and prior to the entry of the final decree, the records in adoption proceedings shall be open to inspection only by the petitioner or his or her attorney, the investigator appointed under Section 26-10A-19, any attorney appointed for the adoptee under Section 26-10A-22, and any attorney retained by or appointed to represent the adoptee. Such records shall be open to other persons only upon order of court for good cause shown.

(b) All hearings in adoption proceedings shall be confidential and shall be held in closed court without admittance of any person other than interested parties and their counsel, except with leave of court.

(c) After the final decree of adoption has been entered, all papers, pleadings, and other documents pertaining to the adoption shall be sealed, kept as a permanent record of the court, and withheld from inspection except as otherwise provided in this section and in subsection (c) of Section 22-9A-12. No person shall have access to such records except upon order of the court in which the decree of adoption was entered for good cause shown except as provided in subsection (c) of Section 22-9A-12.

(d) When the court issues the adoption order, all licensed agencies or individuals shall send a sealed information summary sheet and the non-identifying information referred to in subsection (g) in a separate summary sheet to the State Department of Human Resources. The following information shall be included:

- (1) Birth name and adoptive name;
- (2) Date and place of birth of person adopted, except in the case of abandonment;
- (3) Circumstances under which the child came to be placed for adoption;
- (4) Physical and mental condition of the person adopted, insofar as this can be determined by the aid of competent medical authority;
- (5) Name and last known address of natural parents, dates of birth and Social Security numbers, if known;
- (6) Age of the natural parents at child's birth;
- (7) Nationality, ethnic background, race, and religious preference of the natural parents;
- (8) Educational level of the natural parents;
- (9) Pre-adoptive brother/sister relationships;
- (10) Whether the identity and location of the natural father is known or ascertainable.

(e) The State Department of Human Resources and the investigating agency's adoption records must be kept for a minimum term of 75 years. If a licensed child placing agency ceases to operate in Alabama, all adoption records of the agency, including those of the child, the natural family and the adoptive family, shall be transferred to the Department of Human Resources.

(f) Except as otherwise provided in this section and in subsection (c) of Section 22-9A-12, all files of the investigating office or agency appointed by the court under Section 26-10A-19 shall be confidential and shall be withheld from inspection except upon order of the court for good cause shown.

(g) Notwithstanding subsection (f) of this section, the State Department of Human Resources or the licensed investigating agency appointed by the court pursuant to Section 26-10A-19(b) and (c), shall furnish, upon request, to the petitioners, natural parents or an adoptee 19 years of age or older, non-identifying information which shall be limited to the following:

- (1) Health and medical histories of the adoptee's natural parents;
- (2) The health and medical history of the adoptee;
- (3) The adoptee's general family background, including ancestral information, without name references or geographical designations;

- (4) Physical descriptions;
- (5) The length of time the adoptee was in the care and custody of one other than the petitioner; and
- (6) Circumstances under which the child comes to be placed for adoption.
- (h) Notwithstanding subsection (f), if either the natural mother or the natural or presumed father have given consent in writing under oath to disclosure of identifying information as defined in subsection (d) and which is not otherwise provided in this section and in subsection (c) of Section 22-9A-12, the State Department of Human Resources or a licensed child placing agency shall release such identifying information.
- (i) If the court finds that any person has a compelling need for non-identifying information not otherwise available under subsection (e) of this section which only can be obtained through contact with the adoptee, the adoptee's parents, an alleged or presumed father of the adoptee, or the adoptee's adoptive parents, the court shall direct the agency or a mutually agreed upon intermediary, to furnish such information or to establish contact with the adoptee, the adoptee's natural parents, the alleged or presumed father of the adoptee, or the adoptive parents of the adoptee in order to obtain the information needed without disclosure of identifying information to or about the applicant. Said information then shall be filed with the court and released to the applicant within the discretion of the court. However, the identity and whereabouts of the person or persons contacted shall remain confidential.
- (j) Notwithstanding any subsection of this section to the contrary, when an adult adoptee reaches the age of 19, the adoptee may petition the court for the disclosure of identifying information as defined in subsection (d) and which is not otherwise provided for in this section or in subsection (c) of Section 22-9A-12, if a natural or presumed parent has not previously given consent under subsection (h). The court shall direct an intermediary to contact the natural parents to determine if the natural parents will consent to the release of identifying information. If the natural parents consent to the release of identifying information the court shall so direct. If the natural parents are deceased, cannot be found or do not consent to the release of identifying information then the court shall weigh the interest and rights of all of the parties and determine if the identifying information should be released without the consent of the natural parents.

(Acts 1990, No. 90-554, p. 912, §30; Act 2000-794, p. 1869, §1.)

Section 26-10A-32 Birth certificates.

- (a) Within 10 days of the final decree being entered the judge or the clerk of the court shall send a copy of the final order to the Department of Human Resources and shall send a certificate of the final order of adoption to the State Registrar of Vital Statistics of the State Board of Health upon the form supplied by the state registrar for that purpose.
- (b) Upon receipt of copy of any final order of adoption the State Registrar of Vital Statistics shall cause to be made a new record of the birth in the new name and with the name or names of the adopting parent or parents as contained in the final decree. The state registrar shall then cause to be sealed and filed the original certificate of birth with the decree of the court.
- (c) Except as otherwise provided by subsection (c) of Section 22-9A-12, after the new birth certificate has been issued, the original birth certificate and the evidence of adoption are not subject to inspection except upon order of the court for good cause shown.

(Acts 1990, No. 90-554, p. 912, §31; Act 2000-794, p. 1869, §1.)

Section 26-10A-33 Crime to place children for adoption.

Only a parent, a parent of a deceased parent, or a relative of the degree of relationship specified in Section 26-10A-28, the Department of Human Resources or a licensed child placing agency, or an agency approved by the Department of Human Resources may place a minor for adoption. No person or entity other than the Department of Human Resources or a licensed child-placing agency shall engage in the business of placing minors for adoption. Any person or entity making more than two unrelated placements of minors for adoption within the preceding twelve month period shall be deemed to be in the business of placing minors for adoption. Any other person who places a minor for adoption is guilty, upon the first conviction, of a Class A misdemeanor and upon subsequent convictions is guilty of a Class C felony. This section does not intend to make it unlawful for any person not engaged in the business of placing minors for adoption to give advice and assistance to a natural parent in an adoption. In making adoption arrangements, potential adopting parents and birth parents are entitled to the advice and assistance of legal counsel. Surrogate motherhood is not intended to be covered by this section.

(Acts 1990, No. 90-554, p. 912, §32.)

Section 26-10A-34 Payments to parent for placing minor for adoption; maternity expenses; receipt of financial benefits by father.

(a) It shall be a Class A misdemeanor for any person or agency to offer to pay money or anything of value to a parent for the placement for adoption, for the consent to an adoption, or for cooperation in the completion of an adoption of his or her minor. It shall be a Class C felony for any person or agency to pay money or anything of value to a parent for the placement of a child for adoption, for the consent to an adoption, or for cooperation in the completion of an adoption of his or her minor. This section does not make it unlawful to pay the maternity-connected medical or hospital and necessary living expenses of the mother preceding and during pregnancy-related incapacity as an act of charity, as long as the payment is not contingent upon placement of the minor for adoption, consent to the adoption, or cooperation in the completion of the adoption.

(b) It shall be a Class C felony for any person or agency to receive any money or other thing of value for placing, assisting or arranging a minor placement. This section is not intended to prohibit legitimate charges for medical, legal, prenatal or other professional services.

(c) Surrogate motherhood is not intended to be covered by this section.

(Acts 1990, No. 90-554, p. 912, §33.)

Section 26-10A-35 Bringing child into state for adoption purposes.

Children may be brought into Alabama for purposes of adoption as provided in Section 38-7-15 except that investigations shall be made as provided in Section 26-10A-19(c).

(Acts 1990, No. 90-554, p. 912, §34.)

Section 26-10A-36 Advertisement as to adoption by persons, organizations, etc., not licensed by Department of Human Resources.

It shall be unlawful for any person or persons, organizations, corporation, partnership, hospital, association, or any agency to advertise verbally, through print, electronic media, or otherwise that they will:

(1) Adopt children or assist in the adoption of children in violation of this chapter;

(2) Place or assist in the placement of children in foster homes, group homes, or institutions in violation of this chapter; or

(3) Pay or offer money or anything of value to the parents of a child in violation of Section 26-10A-34.

Any violation of this section shall be punished as a Class A misdemeanor.

(Acts 1990, No. 90-554, p. 912, §35.)

Section 26-10A-37 Rules of procedure and rules of evidence.

The Rules of Civil Procedure and the Rules of Evidence apply to the probate court in adoption proceedings to the extent they apply under Section 12-13-12.

(Acts 1990, No. 90-554, p. 912, §37.)

Section 26-10A-38 Application to existing adoptions.

Final orders of adoptions entered prior to January 1, 1991, remain in effect on January 1, 1991, even though the statute under which the adoption was made may be repealed or modified by this chapter. Those adoptions continue in effect as they existed prior to this chapter except that proceedings after final orders of adoption previously entered will be governed under this chapter.

(Acts 1990, No. 90-554, p. 912, §39.)

DEPARTMENT OF HUMAN RESOURCES OF THE STATE OF ALABAMA

**REGULATIONS AND PROCEDURES FOR HEARING
ON DENIALS AND REVOCATIONS OF LICENSES FOR
CHILD CARE INSTITUTIONS, MATERNITY CENTERS, CHILD PLACING AGENCIES,
GROUP HOMES, DAY CARE CENTERS AND NIGHTTIME CENTERS,
GROUP DAY CARE HOMES AND GROUP NIGHTTIME HOMES, AND
FAMILY DAY CARE HOMES AND NIGHTTIME HOMES**

Revised October 1988

I. Introduction

The Code of Alabama 1975, as amended (hereinafter referred to as Code), specifically Sections 38-7-9 and 38-7-11, provides the legal base for regulations and procedures for hearings on denials and revocations of licenses issued to child care facilities by the Department of Human Resources. * The regulations contained herein are also in accordance with the rules provided in the Alabama Administrative Procedures Act (Act No. 81-855).

An aggrieved person may appeal to the Department for a fair hearing in the event:

- A. An application for an initial license, six-month permit, or an approval is denied;
- B. An application for a renewal of a license, six-month permit, or an approval is denied;
- C. A license, six-month permit, or an approval is revoked, suspended, or otherwise modified or
- D. An application for license or approval is not acted upon with reasonable promptness. "Reasonable promptness" is defined as 30 days from the date of the receipt by the Department of all information required to make the decision to grant or deny a license.

Also the term "County Department" will be used herein to designate a County Department of Human Resources and the term "State Department" will be used to designate the State Department of Human Resources in Montgomery.

Pursuant to the Code, Sections 38-7-1 through 38-7-17, these Regulations and Procedures are applicable to the following child-care facilities (refer to definitions in Section II):

- A. Child Care Institution
- B. Maternity Center
- C. Child Placing Agency
- D. Group Home
- E. Transitional Living Facility
- F. Day Care or Nighttime Center
- G. Group Day Care Home or Group Nighttime Home

H Family Day Care Home or Nighttime Home

A copy of these Regulations and Procedures concerning an individual's right to appeal and the methods by which this right may be exercised is to be given at the following times:

- When an application for a license to operate a facility is requested;
- When an application is denied;
- When a license is to be revoked, suspended, or otherwise modified, or renewal denied; or
- At other times when reasonably requested.

II. Definitions

Fair Hearing - Process by which an aggrieved party may take his grievance before the State Department whereby authority is exercised fairly and consistently and the fundamental principles of justice are exercised within the conception of due process of law.

Pre-revocation Hearing - A hearing automatically provided by the State Department preceding the intended revocation of a license to give the person an opportunity to show why the action should not be taken.

Suspension of License - Action taken by the Department which prohibits a child care facility from operating for a period of not longer than 120 days.

License - Document issued by the Department to a person, group of persons or corporation which allows them to legally operate or conduct a child care facility for a period of 2 years.

Six-Month Permit - Document issued by the Department to a person, group of persons, or corporation which allows them to legally operate or conduct a child care facility for a period of six-months for the purpose of becoming eligible for a full license.

Approval - Letter issued by the Department giving evidence that an otherwise exempt day care facility [refer to Code, Section 38-7-2(8)] meets all Minimum Standards for Day Care Centers and Nighttime Centers. The approval is used only for day care centers which enter into contracts with the Department to provide services to eligible recipients.

Child Care Institutions - A child care facility where more than 10 children are received and maintained for the purpose of providing them with care or training or both but does not include:

Any institution for child care which is under the ownership or control, or both, of the State of Alabama, or which is operated or certified or licensed by another agency or department of the State of Alabama;

Any juvenile detention home established and operated by the State of Alabama; or

Any bona fide boarding school in which children are primarily taught branches of education corresponding to those taught in public schools, grades 1 through 12, or taught in public elementary schools, or both elementary and high school.

Maternity Center - A facility in which any person, agency, or corporation receives care for one or more minor pregnant girls, except that the term does not include hospitals.

Child Placing Agency - A public or private child care facility which receives any child or children for the purpose of placing or arranging for the placement of the child or children in foster family homes or other facilities for child care apart from the custody of the child's or children's parents. The term "child placing agency" includes, but is not limited to, all agencies established and maintained by a municipality or other political subdivision of the State of Alabama to protect, guard, train, or care for children outside their own homes, but does not include any circuit court or juvenile court or any duly appointed juvenile probation officer or youth counselor or the court who receives and places children under an order of the court.

Group Home - A child care facility where at least 7 but not more than 10 children are received and maintained for the purpose of providing them with care or training or both.

Transitional Living Facility - A child care facility or program that is designed to give opportunities to practice independent living skills to eligible persons at least 16 years of age and under 21 years of age in foster care in a variety of residential settings with varying degrees of care and supervision.

Day Care Center - Any child care facility receiving more than 12 children for daytime care during all or part of a day. The term "day care center" includes, but is not limited to, facilities commonly called "child-care centers", "day nurseries", "nursery schools", "kindergartens", and "play groups" with or without stated educational purposes. Such term further includes, but is not limited to, kindergarten or nursery schools or other daytime programs operated as a part of a private school and receiving more than 12 children younger than lawful school age for day time care for more than four hours a day, with or without stated educational purposes. The term does not include:

Kindergartens or nursery schools or other daytime programs operated by public elementary systems or secondary level school units or institutions of higher learning;

Kindergartens or nursery school or other daytime programs with or without stated educational purposes, operating no more than four hours a day and receiving children younger than lawful school age;

Kindergartens or nursery schools or other daytime programs operated as part of a private school and receiving children younger than lawful school age for four hours a day or less, with or without stated educational purposes;

Facilities operated for more than four hours a day in connection with a shopping center or service or other similar facility where transient children are cared for temporarily while parents or custodians of the children are occupied on the premises or are in the immediate vicinity and readily available, provided, however, that such facilities shall meet local and state fire and health requirements;

Any type of day care center that is conducted on federal government premises; or

Special activities programs for children of lawful school age including, but not limited to, athletics, crafts instruction, and similar activities conducted on an organized and periodic basis

by civic, charitable and governmental organizations, provided, however, that local and state fire and health requirements are met.

Nighttime Center - A facility which is established to receive 12 or more children for care after 7 p.m.

Group Day Care Home - A child care facility which is a family home and which receives at least 7 but no more than 12 children for care during part of the day where there are at least two adults present and supervising the activities.

Group Nighttime Home - A child care facility which is a family home which receives at last 7 but no more than 12 children for nighttime care after 7 p.m. where there are at least two adults present and supervising the activities.

Family Day Care Home - A child care facility which is a family home which receives not more than 6 children for care during the day.

Nighttime Home - A family home which receives no more than 6 children for care after 7 p.m.

Exempt Day Care Facility - Certain pre-school programs operated by churches and religious non-profit elementary schools which are exempt from licensure.

III. Pre-revocation Hearing

If the Department makes the decision to revoke or refuse to renew the license, approval or Six-Month permit, a pre-revocation hearing must be held. The purpose of the pre-revocation hearing is to provide adequate notice of the intended revocation and provide sufficient opportunity for the licensee/permit or approval holder to show why the action should not be taken.

The notice of the pre-revocation hearing will be sent to the licensee/permit or approval holder by certified mail unless waived. The pre-revocation hearing will be held either in the County Department or the State Department in Montgomery with the licensee/permit or approval holder and staff members of the Department. The hearing officer for the pre-revocation hearing will be a staff member of the State Department of Human Resources. The licensee/permit or approval holder must be present at the pre-revocation hearing unless the hearing officer excuses him for a specified reason. He may speak for himself or be represented by an attorney or other representative. An attorney for the Department may also be present. The licensee/permit or approval holder may present written evidence or oral testimony and bring to the pre-revocation hearing members of his family, other persons and witnesses. He and his representative have the right to review in the State Department or the County Department, as appropriate, at reasonable times prior to or during the pre-revocation hearing, the case file and written material which will be placed on exhibit or in evidence by the Department. Certain confidential information such as child abuse and neglect records may remain privileged and not subject to disclosure or review. He has a right to request the issuance of subpoenas to witnesses. The request must be received by the hearing officer no later than 10 days prior to the pre-revocation hearing.

If, after having received notice of the pre-revocation hearing, the licensee/permit or approval holder chooses not to have a pre-revocation hearing, he must notify the hearing officer verbally

or in writing. The hearing officer will send a letter to the licensee/permit or approval holder confirming the cancellation of the pre-revocation hearing and advising him that the intended action will be taken. The decision not to have a pre-revocation hearing does not alter the right to a fair hearing following the action taken.

During the pre-revocation hearing the hearing officer will hear testimony from the Department as to the specific findings upon which the intended revocation is based. Specific Minimum Standards which are not met will be cited by the Department. The licensee/permit or approval holder or his designated representative will be provided opportunity to present objections to the Department's intended action and to refute findings upon which the decision was based.

The licensee/permit or approval holder should be given the opportunity to voluntarily surrender the license or permit or to withdraw the application for renewal.

Following the pre-revocation hearing, the hearing officer will render a decision as to whether the intended action should be taken. If the license/permit/approval is to be revoked, the hearing officer will send a letter by certified mail, unless waived, to the licensee/permit or approval holder and his attorney, if any, stating the decision and citing specific Minimum Standards not met and supporting evidence. If it appears that the Department should take a different action, the hearing officer may recommend that the Department make appropriate stipulations, agreements, arrangements, etc.

The licensing authority will take the action specified and notify the licensee/permit or approval holder of the effective date. The Director of the County Department or his/her designee is the licensing authority for group day care and nighttime homes and family day care and nighttime homes. The Commissioner of the State Department is the licensing authority for all other child-care facilities licensed by the Department, except in Mobile County the Director of the County Department or his/her designee is the licensing authority for day care centers and nighttime centers.

Refer to Section VI, I., for procedures which will be followed if the licensee/permit or approval holder or his authorized representative fails to appear at the pre-revocation hearing.

The pre-revocation hearing does not alter the right of the licensee/permit or approval holder to a fair hearing as provided in the Code, Section 38-7-9, if he/she is dissatisfied with the decision of the Department following the pre-revocation hearing. Notice of the right to appeal for a fair hearing must be sent to the licensee/permit or approval holder by certified mail.

Note: No pre-denial hearing is required to be held prior to the denial of an initial application for a license, Six-Month permit or approval.

IV. Probationary Permit (Alternative to Revocation)

Within the licensure period, the Department may issue one Six-Month permit on a provisional basis to a licensed child-care facility found to be out of compliance with the Department's minimum standards where such noncompliance does not represent a hazard to the health or safety, or physical, moral or mental well-being of the children in care. During this six-month period, the child-care facility shall correct the items which were in noncompliance and report the corrections to the Department for determination of eligibility for a full license.

The Department cannot consider the issuance of this probationary permit as an alternative to revocation unless the child-care facility has voluntarily surrendered its license to the Department.

V. Suspension of License

In accordance with the Code, Sections 38-7-11 and 41-22-19 (d), the Department has the authority to immediately suspend without notice the license/six-month permit/approval if an inspection by the Department of a licensed or approved child care facility disclose any condition, deficiency, dereliction, or abuse, which is, or could be, hazardous to the health, safety, or physical, moral, or mental well-being of the children in the care of the child care facility being inspected. The suspension may remain in effect for a period of not longer than 120 days and shall not be renewable. The pre-revocation hearing shall be scheduled as soon as possible to give the licensee/permit or approval holder an opportunity to show why the license/permit/approval should not be revoked. Procedures for the pre-revocation hearing, as outlined in Section III above, will be followed.

VI. Fair Hearing

A. Time for Request

When a pre-revocation hearing has been held, a request for a fair hearing may be filed with either the State or County Department and must be postmarked within 14 calendar days of the notice of revocation. In all other situations where a pre-action hearing has not been held, a request for a fair hearing must be filed and postmarked within 60 calendar days of the date of the action (or inaction) with which the aggrieved person is dissatisfied. In the absence of a legible postmark, the State or County Department will assume the request was mailed three days prior to its receipt. If the aggrieved person or his representative presents a written statement to the State or County Department, the date the statement is presented will be considered the filing date.

B. Status of License During Hearing Period

Any existing license, six-month permit or approval shall remain in effect during the 14 day time period to request a hearing. If a hearing is requested, the existing license, six-month permit or approval shall remain in effect until, and including, 30 days after the final decision of the Department is rendered or 30 days after the final decision on a request for a rehearing.

If the Department determines, and states in writing, that a danger to the public health, safety or welfare requires emergency suspension, the existing license may be suspended immediately or on the date specified in the notice of suspension.

C. Contents of Request

A hearing request is any clear, written statement that the aggrieved person (claimant) is appealing to the State Department for the opportunity to present his case. Any such clear statement in writing by the claimant or his attorney will be accepted as a formal request for a hearing if the request is based on action (or inaction) by the Department as provided in the Code, Section 38-7-9.

If the appeal is filed by someone other than the aggrieved person, there must be a

definite statement by the person making the appeal that it is being made upon authorization of the aggrieved person.

The request must provide the following information.

1. Specific information about the basis for the dissatisfaction with the action (or inaction) of the Department;
2. The approximate date of the action causing dissatisfaction;
3. The correct mailing address of the claimant; and
4. The correct mailing address of the claimant's attorney, if any.

D. Acknowledgment of Hearing Request

After the State Department receives the written request for a hearing (either directly from the claimant or his representative or forwarded from the County Department), the hearing officer will send a letter to the claimant and his attorney, if any, stating whether or not the claimant's request is accepted and, if not, why. If the request is accepted, the letter will include the following information:

The hearing procedures (a copy of the Regulations and Procedures for Hearings shall be enclosed with the letter to the claimant, if he has not been provided a copy previously, and a copy sent to the claimant's attorney, if any);

The claimant's right to present the case or be represented by legal counsel or any other person;

The claimant's right to present written evidence and oral testimony and to bring to the hearing members of his family and other persons to serve as witnesses;

The claimant's and his attorney's right to review in the State of County Department, as appropriate, at reasonable times prior to or during the hearing, the case file and written material which will be placed on exhibit or in evidence by the Department at the hearing (certain confidential information such as child abuse and neglect reports may remain privileged and not subject to disclosure or review);

The fact that the hearing will be held at a convenient location and that he will be notified in advance of the time, date, and place of hearing; and

The right to request issuance of subpoenas to witnesses and the fact that the request must be received by the hearing officer no later than 10 days prior to the hearing.

A copy of the letter to the claimant will be sent to the County Department, if appropriate.

E. Withdrawal or Settlement of Request for Hearing

1. Withdrawal

When the original reason for the hearing has been removed, the State Department will write the claimant, or his attorney, a letter stating this to be the case and asking if the claimant wishes to withdraw his request for a hearing. This shall not prohibit the claimant's continuing with the hearing if he so desires. Any decision to withdraw must be the claimant's.

The request for withdrawal must be in writing and state the reason for withdrawal. A letter of withdrawal by the claimant or his attorney will be accepted; no other

person can withdraw a request for a hearing. The letter of withdrawal may be sent or given to either the State or County Department. An appeal will be considered to have been withdrawn as of the postmarked date the claimant or his attorney brings a withdrawal statement to the County or State Department. The State Department will write a letter to the claimant acknowledging the acceptance of the request to withdraw the hearing.

2. Settlement

A hearing request may be resolved by stipulation, settlement, consent, default or other agreement in writing. The agreement must be filed with the hearing officer and made a part of the hearing record.

F. Notice of Hearing

The hearing officer sets the date, time, and place for the hearing. A written notice will be mailed by the State Department to the claimant and his attorney, if he has one, at least 14 days before the hearing. A copy of the notice will be mailed to the County Department, if appropriate.

1. Content of Notice

The notice of the hearing must include:

- The date, time, place, and nature of the hearing;
- A statement of the legal authority and jurisdiction;
- Reference to particular sections of the statutes and rules involved;
- A short, plain statement of the matters asserted or issues involved;
- Statement that if the claimant or his attorney fail to attend the hearing on the scheduled date without good cause, the hearing officer may proceed with the hearing and recommend a decision in his absence; and
- Statement that the hearing officer will determine whether the reason for failure to attend is acceptable for good cause.

2. Service of Notice

Service of notice of the hearing may be:

- By certified mail, return receipt requested;
- By any sheriff, constable, or other officer authorized to make service of process in civil court proceedings in this state;
- By any employee, agent or representative of the County or State Department of Human Resources;
- By mailing by first-class mail, postage prepaid, to the person to be served together with an acknowledgment of service form on a postcard, or in a letter form with a return envelope, postage prepaid, addressed to the sender.

G. Issuance of Subpoenas

The County or State Department, an aggrieved person or their representatives have the right to request the issuance of subpoenas to witnesses and compel their attendance and the production of papers and writings. The claimant and/or his representative is notified at the time of acknowledgment of hearing request of his right to subpoena witnesses.

The request for a subpoena can be made orally and must be confirmed in writing. The request must be received by the hearing officer no later than 10 days prior to the hearing and must be accompanied by the name and address of the person to be subpoenaed.

The subpoena may be served by any of the means specified for service of the notice of hearing (refer to Section VI. F. 2.)

H. Organization of Hearing

1. The Hearing Officer

The hearing officer is an employee, panel of employees or designee, including a designee by contract or agreement, of the State Department of Human Resources. If a panel is used, one member of the panel will be designated as chairperson. A person who has served as hearing officer for a pre-revocation hearing cannot serve as hearing officer or member of the panel for a fair hearing. The hearing officer cannot conduct a hearing of any case in which he has taken part or assisted in the Department's action. The hearing officer exercises full control over the conduct of the hearing.

The duties of the hearing officer include, but are not limited to, the following:

- To direct the hearing;
- To explain the conduct of the hearing;
- To hear testimony;
- To administer oaths, to examine witnesses, to limit the number of witnesses when their testimony would be repetitious or cumulative; and otherwise receive evidence having a bearing on the point(s) of issue. In examining witnesses and in the general conduct of the hearing, the hearing officer must maintain an attitude of impartiality. The only objective in examining witnesses shall be to attempt to arrive at the truth concerning the issues involved. The hearing officer may call and examine witnesses on his own.
- To order, where relevant, necessary, and useful, an independent medical assessment or professional evaluation at agency expense (cost to the agency should not exceed the current maximum payment for other medical examinations paid for by the agency as an administrative expense);
- To exclude from the hearing material unrelated to the point(s) at issue and otherwise decide on the admissibility of evidence;
- To decide on the kind of record to be made of the hearing;

- To sign and issue subpoenas to witnesses or for the production of papers and writings;
- To grant or deny and set time and place for continuances, postponements or further submission of evidence, arguments or briefs;
- To grant or deny petitions or motions to amend, intervene or apply for rehearings; or
- To reprimand, exclude, or limit the presence of witnesses or other persons at the hearing because of improper conduct, space limitations, or a sequestration of witnesses requested by a party or on the hearing officer's own motion; and
- To render a final decision.

2. The Claimant

The claimant must be present at the hearing unless the hearing officer excuses him for a specific reason. A request from the claimant to be excused from the hearing may be either written or oral and confirmed in writing. The request should be received in the State Office at least three days prior to the hearing and must state the reasons for the request and specify the person designated by the claimant to represent him. An oral request may be justified when last minute emergencies prohibit the claimant from attending the hearing. In any appeal where the claimant is not present, his designated representative must appear on his behalf.

3. Witnesses

The claimant may have members of his family and other persons present at the hearing who may serve as witnesses. Staff or board members of either Department may attend and may serve as witnesses. The hearing officer, however, will consider a person qualified to be a witness only when the person has factual knowledge about the point(s) at issue. Witnesses must testify under oath.

I. Procedures when Claimant Fails to Attend the Hearing

If the claimant or his representative fails to appear at the hearing after proper notice, the hearing officer may, if no adjournment or postponement is granted, proceed with the hearing and make a decision in the absence of such parties. The hearing officer will immediately send a letter by certified mail, return receipt requested, to the claimant or his representative giving the decision. The claimant will be advised in the letter that he may apply for a rehearing within 15 days of the decision if he can show good cause for failure to attend the scheduled hearing. The hearing officer may require verification of the reason given by the claimant for failure to attend the hearing.

Adjournment, continuance, postponement rescheduling or reopening of the hearing may be granted by the hearing officer for good cause. The following factors will be considered in determining good cause:

- Death in the family;
- Personal injury or illness which reasonably prohibited the client from attending the hearing; and

- Sudden and unexpected emergencies.

J. Conduct of Fair Hearing when a Pre-revocation Hearing Has Been Held

When a pre-revocation hearing has been held, the fair hearing will be conducted on the record. No additional evidence or testimony will be admitted unless it can be shown that it is material to the issues of the case and could not have been presented at the prior hearing with reasonable diligence or that the additional evidence was not allowed at the prior hearing due to unlawful procedures.

K. Conduct of Hearing When No Pre-revocation Hearing Has Been Held

1. Statement of Issue(s)

The hearing officer will state and define the issue(s). The claimant or the person who represents him will be asked whether he accepts the statement of the issue(s). If not, the claimant or the person who represents him may correct or modify the statement. The issue(s), however, must have a bearing upon the action by the Department with which the claimant is not in agreement.

The hearing officer may allow a reasonable time for an opening statement by the claimant or Department or their representatives. Any preliminary legal motion or argument shall be presented in writing to the hearing officer before or immediately after the opening of the hearing.

2. Period of Testimony

The hearing officer will administer oaths and will hear testimony about the defined issue(s) from the parties, their representatives, and qualified witnesses. All persons giving testimony must confine their remarks to factual information relating to the defined issues in the particular case. The hearing officer, the claimant or his representative, or Department staff having responsibility for the action being appealed, or attorney for the Department may direct questions to witnesses, as indicated, provide the questions relate to the defined issues. Oral, documentary and other evidence may be admitted as allowed by law. Parties or their representatives may object to the admission of oral, documentary or other evidence. The hearing officer shall timely rule on all objections to the admissibility of evidence. Official notice may be taken of all facts of which judicial notice may be taken and of other scientific and technical facts within the specialized knowledge of the Department. The rules of evidence as applied in the circuit courts of this state shall be followed and effect shall be given to the rules of privilege.

3. Failure of a Subpoenaed Witness to Appear

If the issue of the non-appearance of a subpoenaed witness and/or documents is raised by a party to the hearing, the hearing officer will make a determination whether the witness or documents are necessary to the presentation of the case. If determined necessary, the hearing officer may decide to continue the hearing generally or to continue the hearing until a later date.

If enforcement of the subpoena power is necessary, the hearing officer shall inform the Office of Legal Services, State Department of Human Resources, of the facts involved. The Office of Legal Services will then initiate legal proceedings to enforce the subpoena powers.

4. Period of Arguments

The hearing officer will allow a reasonable time for the claimant or his representative to summarize their factual data and to present any arguments and complaints they wish about the points under consideration in the particular case. This may include refuting oral or written testimony or evidence. Department staff, or the attorney for the Department, may also be allowed a reasonable time to summarize their factual data, testimony, or evidence about the points under consideration. A written memorandum of proposed findings of fact and conclusions of law may be presented before the close of the hearing or within the time specified by the hearing officer.

5. Conclusion of Hearing

The hearing may be adjourned from day to day or to a designated date, at the discretion of the hearing officer, when reasonably necessary to give full opportunity to obtain and present all evidence concerning the points at issue in the particular case. The hearing may be concluded when the hearing officer is satisfied that all pertinent information bearing upon the issue(s) has been introduced and examined.

6. The Hearing Record

The hearing record includes: all pleading, motions, and intermediate rulings; all evidence received or considered; a statement of all matters officially noticed; all questions and offer of proof; all objections and rulings; all proposed findings and exceptions; any decision, opinion, or report by the hearing officer, any staff memoranda or data submitted; and any stenographic notes, reporter or machine recording of the oral proceedings or transcription.

The original recording and/or transcription of the hearing will be maintained at the State Department. If appropriate, a copy will be sent to the County Department for inclusion in the claimant's case record. The hearing record shall be made available to the claimant and/or his representative for inspection and copying. A reasonable charge may be made for copying, transcription and other services provided.

L. Decision on Appeals

The final administrative action on a hearing request must be made within 90 days of the effective date of the request and within 30 days of the hearing date unless waived by the claimant and the Department or their representatives.

The final decision shall be in writing, signed by the hearing officer, made a part of the hearing record, and shall set forth the issue(s), the principal and relevant facts brought out at the hearing, the pertinent provisions in agency policy, and findings of fact and conclusions of law separately stated.

The hearing decision shall be served by certified mail, return receipt requested, unless waived by the claimant, Department, or their representatives. A copy shall be sent to the County Department to be included in the claimant's case record, if appropriate.

The decision is final and binding upon the claimant and the Department and is not invalidated by the Department's action so long as the conditions under which the decision was made remain the same. However, this does not preclude the Department

from modifying the provision of services to meet changes in law, policy, or the claimant's situation.

Upon receiving a copy of the decision, the State or County Department shall take immediate steps to see that any necessary action is taken. If the decision requires action by the State or County Department, the State or County Department shall send a written report to the hearing officer stating what action has been taken.

M. Application for Rehearing

An aggrieved person, the State or County Department, or their representatives may file an application for a rehearing within fifteen (15) days of the final decision. The application shall specify in detail the grounds for the relief sought and give the supporting authority. The filing of such an application shall not extend, modify, suspend or delay the effective date of the decision unless or until said decision shall be superseded, modified, or set aside. Copies are to be served on all parties who may file replies thereto within 10 days. Service may be made by any of the same means as specified in the section regarding the notice of hearing (refer to Section VI, F. 2).

The application for rehearing may be granted only if the final decision is:

1. In violation of state or federal law;
2. In excess of the statutory authority of the Department;
3. In violation of a rule of the Department included in the Department's Administrative Code;
4. Made upon unlawful procedure;
5. Affected by other error of law;
6. Based upon clearly insufficient or unreliable evidence in the record; or
7. Unreasonable, arbitrary, capricious, or inconsistent with prior decisions or based clearly on insufficient justification.

Within 30 days after the filing of an application, the hearing officer may at his discretion enter a decision:

1. Setting a hearing on the application;
2. On the application without a hearing; or
3. Granting or denying the application.

If no decision is entered within 30 days after the filing of the application, the application shall be deemed denied.

N. Judicial Review

An aggrieved person that is still dissatisfied after the final decisions has been made, shall be entitled to file a notice of appeal or review of the decision with the circuit court of competent jurisdiction. The notice must be filed within 30 days after receipt of the final decision or within 30 days after the decision on a request for rehearing and must comply with all statutory requirements. The filing of such notice will not delay enforcement of the final decision unless a court of competent jurisdiction shall enter an order to the contrary.