

NON-DHR ADOPTION

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I. INTRODUCTION

“Non-DHR adoptions” are those adoptions where the Department does not have the legal authority to consent to an individual’s adoption. Included in this group are:

- adoption by relatives;
- adoption of adults;
- adoption placements made by licensed child-placing agencies; and
- adoption of children placed independently by birth parents.

Code of Alabama, 1975 §26-10E-15 provides that hospitals or other health facilities may not release a child to be adopted to any person other than the Department of Human Resources; a licensed child-placing agency; the child’s parent; a relative by blood or marriage; or a person holding legal custody of the child unless the child’s release is authorized in writing by one of the child’s parents or an agency which, following the child’s birth, has been granted legal custody of the child.

Hospitals or other health facilities are required to report the name and address of any person and, in the case of a person acting as an agent for any organization, the name and address of the organization to which physical custody of a child is released for adoption. This information is reported to the Department on the Report of Release of Child From Hospital For Adoption (DHR-FCS-1750) and must be sent within forty-eight (48) hours of the child’s release from the hospital.

County Departments, upon receipt of a 1750, must examine the information for any indication that the child may have been released improperly. Determine if the child’s release is pertinent to any on-going case activity and take appropriate action as needed. Forms indicating the release of a child to the Department, or a licensed child-placing agency will not ordinarily require any action by the County Department. File the 1750 in the child’s family case record, and if a record does not exist, forward the 1750 to the Office of Adoption. If there is reason to suspect the placement was made by an unauthorized third-party or if the child appears to have been released improperly, contact should be made with the parties listed on the form to determine the circumstances of the child’s release and placement. This information is needed to determine if the Office of Adoption should be notified of a third-party placement and whether it should be included in the Department’s investigation report to the court.

A. Departmental Responsibilities

The Department of Human Resources receives notice of all adoption proceedings (including stepparent and related adoptions, adoption placements by licensed child placing agencies and independent placements) unless service has been previously waived (*Code of Alabama*, 1975 § 26-10E-17). The petitioners are responsible for effecting service to the Department; however, legal documents are frequently sent to the Office of Adoption by Probate Courts.

B. SDHR's Office Of Adoption Responsibilities

The Office of Adoption is responsible for providing a written response to the Probate Court upon receipt of petitions to adopt; consents to adopt; relinquishments or termination of parental rights orders; and Interlocutory Orders designating an investigator. Refer to section II. A. Who May Conduct The Investigation for more detailed information.

The Department has thirty (30) days to give notice of any objection to an adoption petition (*Code of Alabama*, 1975 §26-10E-17). The objection serves as notification to the Court that the Department possesses information which may impact the proposed adoption. The Office of Adoption's response to the Probate Court is based on the information available in agency files and its relevance to the adoption petition.

The Office of Adoption routinely clears the Child Abuse/Neglect Central Registry and the Putative Father Registry in response to all non-DHR adoption petitions.

1. Child Abuse/Neglect (CA/N) Central Registry

Information from on an "indicated" CA/N report involving a petitioner usually becomes available in an unrelated adoption to an investigator during the investigation, and it is not necessary for it to be shared by the Office of Adoption. However, for relative adoptions where an investigation is not required unless cause is shown, the Office of Adoption provides the Court with information from an "indicated" CAN and the Court determines whether an investigation (i.e., adoption home study) is required. A copy of the Office of Adoption's written notification to the Court is sent to the County Department where the petitioner resides in the event that office is contacted by the Probate Court for additional information or is appointed as the investigator.

2. Putative Father Registry (*Code of Alabama*, 1975, §26-10C-1)

The Putative Father Registry, which became law effective January 1, 1997, allows putative fathers to be notified of adoption proceedings involving their child where an adjudication, legitimation, or intent to claim paternity has been filed with the Putative Father Registry maintained by the Office of Adoption.

Registration requires completion of the Putative Father Intent to Claim Paternity (DHR-ACFC-1934) and a Child Support Obligation Income Statement/Affidavit (CS-41). These forms should be obtained from the Office of Adoption. Anyone adjudicated by an Alabama court, or a court in another state or U.S. territory, as the father of a child born out-of-wedlock may also register by filing a certified copy of the court order with the Office Of Adoption. The Putative Father Registry is not a substitute for legal action such as paternity adjudication, legitimization, or securing a court order for custody or visitation.

A father must register with the Putative Father Registry prior to a child's birth or within the thirty (30) day period following the child's birth in order to receive notice of an adoption proceeding. Failure to register with the Putative Father Registry within specified time frames constitutes an irrevocable implied consent to any adoption proceeding.

The Putative Father Registry is cleared to see if a father is registered when the Office of Adoption receives adoption petitions. Information is provided to the court in which the adoption petition has been filed if a child is born within 300 days of the reported dates of sexual intercourse by a registered father. In keeping with the intent of the law to afford protection to putative fathers, the Office of Adoption also checks the Alabama Location Enforcement Collection System (ALECS) and notifies the Court if an adjudicated father is listed in that system. The Court must then give notice of the adoption to the putative father and the birth mother as listed in the registry.

C. Adoption By Relatives (*Code of Alabama*, 1975 § 26-10E-27)

Relatives may file a petition to adopt a related minor child once that child has resided with the petitioner for one (1) year unless good cause is shown for the Probate Court to waive the timeframe. An investigation (i.e., adoption home study) is not required, unless otherwise directed by the court, for the adoption of a minor by a stepparent, grandfather, grandmother, great grandfather, great grandmother, great uncle, great aunt, brother, half brother, sister, half-sister, aunt, or uncle of the first degree, and their respective spouses.

D. Adoption Of Adults

Code of Alabama, 1975 §26-10F-6 provides that an adult may be adopted under the following circumstances: a) the adult is totally and permanently disabled; b) the adult is determined to be an incapacitated person, as define in Section 26-2A-20; c) the adult is a stepchild by marriage or is related in any degree of kinship as defined by the Alabama intestacy laws (43-8-42, 43-8-46-47); or d) has been in a de facto parent-child relationship, with petitioner during the minority of the adoptee for at least one year and may include foster parents. 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 that adult's spouse, or if written consent to adopt has been executed by the guardian or conservator of the adult sought to be adopted.

When the person sought to be adopted is an adult, only the sworn, written consent of that person is required and no order of reference or any home studies need be issued, *Code of Alabama*, 1975 § 26-10F-7. **If the adult to be adopted has been adjudicated incompetent**, the written consent of the adult's guardian or conservator is required. If the adult is without a spouse, guardian, or conservator, and the court has reason to believe that the adult to be adopted is incompetent to give consent, the court shall appoint a guardian ad litem (GAL) who investigates the adult's circumstances and thereby gives or withholds consent.

The GAL is required to file a written report stating the basis for the decision and the court affords a hearing to all parties in order to present evidence about the adult's best interest. If the court determines, upon clear and convincing evidence, that the decision to withhold consent by the GAL is arbitrary and not in the incompetent adult's best interest, it may grant the petition to adopt or make any other orders it deems necessary for the adult's welfare.

E. Adoption Placements By Licensed Child-Placing Agencies (LCPAs)

All private agencies that perform adoption services must be licensed by the Department of Human Resources (*Code of Alabama*, 1975 §38-7-2), and meet the principles, regulations, and procedures set forth in the *Minimum Standards For Child-Placing Agencies*. The Office of Adoption maintains a listing of all currently approved LCPAs.

The Alabama Adoption Coalition is an association of licensed child-placing agencies whose purpose is to promote, educate and advocate adoption as a positive option; to promote best practice adoption standards; to monitor and provide information to its members and the general public on all issues related to adoption; and to influence and collaborate with the legislative process.

II. INDEPENDENT ADOPTIONS

The term independent adoption refers to adoptive placements of children with unrelated individuals that are arranged outside of the auspices of the Department or a licensed child-placing agency. The term, generally, does not include related and stepparent adoptions.

In an independent adoption, the child is usually placed for the purpose of adoption in the home of the prospective parents by the natural parent(s) or person(s) who may or may not be legally responsible for the child.

In investigating the circumstances of the placement, if it appears that an unlicensed third-party arranged the placement, all relevant information should be obtained, including an interview with the third party, if possible, to verify the circumstances. That information, along with the name and address of the third party, should be sent SDHR's Office of Adoption.

Independent placement gives limited protection to the natural parents, the child, and the adoptive parent(s). Often, threats of hazards in future relationships have not been considered, such as interference from natural parents or relatives who know the whereabouts of the child. Rights of children and adoptive parents go unprotected if legal termination of rights of natural parents is not properly handled as proceedings for adoptions are initiated.

It is generally accepted that the child's rights take precedence over both natural and adoptive parents' rights. Therefore, County Departments are responsible for immediately initiating an investigation into the child's circumstances upon receipt of the order designating the County Department as the post-placement investigator of an adoption petition.

A. Who May Conduct The Investigation

Prospective adoptive parents may apply to an Alabama Licensed Child-Placing Agency (LCPA) for the pre-placement investigation, or they may petition the Probate Court for an investigation and the court may order the investigation by an Alabama LCPA, a private independent practitioner (PIP) licensed by the Alabama Board of Social Work Examiners, or the Department of Human Resources. The prospective adoptive parent may also apply directly to the Department. An out-of-state agency, or a facilitator or social worker who is not licensed as a PIP, cannot be appointed to conduct the investigation.

For prospective adoptive parents who apply directly to the Department and desire expedited services, the County Department should discuss the possible timeframe for completion and the parents can make the decision on seeking services from a LCPA or PIP. When prospective adoptive parents, other than those who apply through the Department, make their request for a pre-placement investigation directly to the Department, the request must be in writing to avoid future questions about the Department's authority to conduct the investigation. The written request for a pre-placement investigation must also contain an agreement to pay the fee for an adoption study. Refer to section II, F., Fees For Independent Adoption Investigations.

1. Licensed Child Placing Agencies

All private agencies that are licensed to perform adoption services in Alabama can conduct independent adoption investigations and make pre- and post-placement adoption reports to the court.

It is important to note that not all LCPAs (e.g., many therapeutic foster care providers) are licensed child-placing agencies. This is an important distinction when foster parents from such agencies request consideration to adopt children in the Department's permanent custody. Agencies that are not LCPAs cannot convert the foster home study to an adoption home study, and adoption home studies in these situations will need to be completed by the County Department.

2. Private Independent Practitioners (PIPS)

Private independent practitioners who are currently licensed to perform social casework by the Alabama Board of Social Worker Examiners can conduct pre- and post-placement adoption investigations (*Code of Alabama*, 1975 §26-10E-19). The Board maintains a current listing of licensed PIPs and can be reached at (334) 242 - 5860.

B. Explaining the Investigation's Purpose To Adoption Parties

The exact content of an adoption investigation will depend upon whether it is a pre-placement investigation or if a child has already been placed in the home. Workers must

remember that the individuals involved in the adoption process may not be aware of the Department's roles, functions and procedures and this information should be explained as services are provided to adoptive parents. Adoptive parents must know why the Department of Human Resources is making the investigation and how the information will be used. The worker should clarify reasons the law requires an investigation, explain the type of information needed and the purpose, and give a full explanation of the agency's role and authority.

The birth mother and the birth father should be contacted by the worker to obtain information about family background, why the child was surrendered for adoption, and whether they are satisfied with the arrangements. When approaching a birth parent or relative, the worker should aim toward creating an atmosphere conducive to providing family history and free expression of their true wishes for the child.

As with adoptive parents, the natural parents may not be aware of the agency's role. Many times, natural parents have had no indication that a social study is necessary. The natural parents should be told why the worker is there, the kind of information needed, the way it will help, and the respective functions of the agency and the court.

The natural parents should freely participate in the process to provide a valid picture of the child, present their true attitudes toward adoption, and give significant facts. Natural parents' motivation in giving up the child is very important. Workers must also explore the circumstances that led to giving up the child and whether the parents are sufficiently satisfied with the placement not to interfere in the future.

C. Guidelines For Pre-Placement Investigations

The first step in the adoption legal process is obtaining a pre-placement investigation. A child may not be placed in a prospective adoptive home, either independently or by an agency, prior to the completion of a pre-placement investigation of the petitioners and their home, except for good cause shown to the court and with immediate notice by the petitioners to the court and the County Department of Human Resources.

Although a pre-placement investigation is required by law, there will be situations when a child is placed without the pre-placement investigation. In those situations, all the required information for the investigation will be obtained after placement and reported to the court within sixty (60) days of receiving notification of the adoption proceedings. **If the child has been in the home less than forty-five (45) days** when notification of adoption proceedings is received, the worker should visit the child and family in their home within the 45-day period following placement. **If the child has been in the home forty-five (45) days or longer** when notice of the adoption proceedings is received, the worker should immediately visit the child and family in their home.

The pre-placement investigation must have been completed within twenty-four (24) months of the child's placement. The purpose of pre-placement investigations is to protect children from being placed in uninvestigated homes, to assess the suitability of

the adoptive parents and their home, and to obtain information required by law to aid the court in determining if an adoption may proceed.

When a specific child has been identified for placement, all of the criteria, listed below, for the pre-placement investigation must be included in the investigation and report to the court. When a specific child has not been identified, the information pertaining to the child and birth family must be included in the post-placement investigation and report to the court.

The following information must be obtained during the investigation and included in the pre-placement report to the court (DHR-FCS-1751).

1. The suitability of each petitioner and the petitioner's home for adoption
2. Why the natural parents if living, desire to be relieved of the care, support and guardianship of the child
3. Whether the natural parents have abandoned the child or are otherwise unsuited to have custody of the child
4. All court orders, judgements or decrees affecting the adoptee or any of the petitioner's children
5. Any property owned by the adoptee
6. Medical histories (i.e., physical, and mental) of the adoptee and the biological parents;
7. Criminal history checks on the petitioners
8. All costs and expenses related to the adoption
9. Any other circumstances which may be relevant to the adoptee's placement with the petitioners.

All current and previous marriages, divorces, and deaths of the petitioners and their current or former spouses must be verified. Reports of current medical examinations must be completed on the petitioners and other members of their household. All household members age fourteen (14) years and older must be cleared through the Department's CA/N Central Registry. Refer to Checklist for Independent Adoption Home Study (DHR-FCS-1745) in *Forms and Instruction*.

Medical histories must be completed on the adoptee and biological parents using the Medical History Of A Child To Be Placed For Adoption (DHR-FCS-1748) and the Medical History of Biological Parent Of Child To Be Placed For Adoption (DHR-FCS-1749). A copy of these forms must be given to the petitioners or their attorney prior to the adoption's finalization, and the case record must clearly reflect how and when this was done since the adoption statute specifically requires their provision. Adoptive parents must sign the forms acknowledging receipt of the medical information. Refer to

Forms And Instructions for additional information. Copies are to be retained in the county's case record and in the record at SDHR. A copy is not to be attached to the pre- or post-placement reports to the court unless the Department is ordered to do so in accordance with the Health Information Portability Accountability Act (HIPAA).

D. Guidelines For Post-Placement Investigations

A post-placement investigation is required for all adoptions except, unless otherwise ordered by the court. Refer to I, C., Adoption By Relative, and I, D., Adoption of Adults. If a County Department receives a court order to conduct an investigation in a related or stepparent adoption, a copy of the investigation should be sent to SDHR's Office of Adoption.

County Departments should immediately initiate the post-placement investigation (i.e., adoption home study) upon receipt of a petition and order from the court to perform that investigation or upon receipt of the Office of Adoption's acknowledgement of the notice of adoption proceedings and petition identifying the County Department as the investigator. If the pre-placement investigation was completed by the County Department within twenty-four (24) months of placement, it will serve as the basis for reporting to the court about the suitability of the petitioners to adopt the child. If the pre-placement investigation was not completed within twenty-four (24) months of placement, the post-placement investigation must include all information required in pre-placement investigations (refer to II, C., Guidelines For Pre-Placement Investigations).

Post-placement investigations must include interviews with the adoptive parents and observation of the child, and information regarding any changes in the family's situation. Special attention should be directed to whether adoption is in the child's best interest and whether the petitioner's home is suitable for the child. The petitioners should participate as much as possible in submitting the necessary information. It is the petitioner's responsibility to provide verifications such as custody, marriage, divorce, or death, medical reports for themselves and the child, criminal history checks, CAN clearances, and a copy of the child's birth certificate. Should they fail to provide this documentation after thorough explanation of the need for them, the investigator may attempt to obtain the information through agency resources. Consideration must be given, however, to the significance of the petitioners' failure to exercise their responsibility in the adoption.

The child's birth parents should also be interviewed unless they have lost custody/guardianship through court proceedings, or they cannot be found. Plans for these interviews should be made with the petitioners early in investigative process. Interviews with the birth parents shall consist of a discussion of the circumstances precipitating adoptive placement, how the placement was made, their understanding of adoption, and any agreements for future contact between the birth parents, adoptive parents, and the child. It is also important for the investigator to discuss the consent to adopt and how it was given. Social and medical background must be obtained, and references are to be interviewed.

In the post-placement investigation, the Department must verify all allegations in the petition and include sufficient information in the report so the court can determine whether there has been compliance with the consent or relinquishment provisions of the adoption statute.

Medical histories must be completed on the adoptee and biological parents using the Medical History Of A Child To Be Placed For Adoption (DHR-FCS-1748) and the Medical History of Biological Parent Of Child To Be Placed For Adoption (DHR-FCS-1749). A copy of these forms must be given to the petitioners or their attorney prior to the adoption's finalization, and the case record must clearly reflect how and when this was done since the adoption statute specifically requires their provision. Adoptive parents must sign the forms acknowledging receipt of the medical information. Refer to *Forms And Instructions* for additional information. Copies are to be retained in the county's case record and in the record at SDHR. A copy is not to be attached to the pre- or post-placement reports to the court unless the Department is ordered to do so in accordance with the Health Information Portability Accountability Act (HIPAA).

E. Reports to the Court

Completed pre- and post-placement investigations serve as the basis for the Department's report to the court. Any information that was not available for inclusion in the pre-placement investigation report and/or not filed with the petition must be included in the post-placement report.

If a child was placed without a pre-placement investigation, that information should be given to the court along with the circumstances leading to the child's placement without the pre-placement investigation.

If the child was placed by an unlicensed third-party, the circumstances of the child's placement must be reported to the court along with the name and address of the third-party who arranged the placement.

The Post-Placement Report must contain documentation that reflects the following information and how it was verified. If it is not possible to secure such verification, the report should state the reason(s) it was not possible.

- The child's birth - if there are discrepancies between information shown on the birth record and information on the legal documents, this should be brought to the attention of the petitioners, their attorney, and the court. Errors that are not corrected can cause difficulty and delays in issuance of a new birth certificate for the child following adoption. The Center of Health Statistics will furnish forms for completion of affidavits that may be appropriate if corrections are needed for children born in Alabama.
- Any court decrees pertaining to the child's custody with copies of the documents, or their content made available to the court.

- The marriages and any divorce of the child's birth parents or either petitioner.
- The death of either of the child's birth parents, the petitioner's spouse, or either of the petitioners' former spouse.
- The date the child was placed in the petitioner's home.

The petitioners are required to file with the court a sworn statement of all fees and charges related to the adoption prior to its finalization. A description of these fees, charges, costs, and expenses must also be made a part of the Department's report to the court. Additionally, adoptive petitioners must have court approval, prior to payment, for all charges for expenses, fees, or services they will be paying related to the adoption (*Code of Alabama*, 1975 §26-10E-22).

Code of Alabama, 1975 §26-10E-22 provides that it is a crime to pay or offer to pay money for anything of value to a birth parent for their consent or cooperation in an adoption or for placement of a child for adoption. It is permissible, however, to pay for the maternity-connected medical or hospital expenses and necessary living expenses of the birth mother preceding and during her pregnancy, related in capacity as an act of charity, as long as payment of these expenses is not contingent upon placement of the child for adoption. If an adoption investigation reveals an unlawful payment according to this law, the information should be discussed with the parties involved and made a part of the report to the court and referred to the Office of Adoption for review and further action. If the Department considers the adoption not to be in the child's best interest, the Department's objections shall be included in the report to the court for the judge to consider and determine if the adoption may proceed. If the adoptive parents wish to be relieved of custody of the child or if the child is in need of protective services, all Departmental policies must be followed as with any child in need of protective services.

A copy of the Pre-Placement Report To The Court (DHR-DFC-1751), signed by the County Director or designee is to be given to the prospective adoptive applicants once the pre-placement investigation has been completed. The prospective adoptive applicants are required to file a copy of the report with their petition to adopt when a child is placed in their home. The County Department must also submit a copy of the report to the SDHR's Office of Adoption.

The completed post-placement investigation report must be filed with the court within sixty (60) days from receipt of notice of the adoption proceedings. If the investigation and report cannot be completed within sixty (60) days, the County Department may request that the court grant an extension. Upon a showing of good cause, the court is authorized by law to extend the timeframe beyond the sixty (60) day limit.

F. Fees For Independent Adoption Investigations

The Department of Human Resources is required to collect a \$300.00 fee for investigation services in certain adoptions (*Code of Alabama*, 1975 § 26-10-4.1). The Department must have evidence of prior court approval before collecting the fee.

The fee will be charged to the petitioners in all adoptions except when:

- the County Director grants a waiver (refer to section II. G.);
- the adoption investigation is not specifically required by Alabama statute (§26-10E-27) as in stepparent and closely related adoptions; and
- parental rights have been terminated.

When applicants request a pre-placement investigation for an adoption where a fee must be charged **or** the court orders the Department to complete the pre-placement investigation, the County Department will advise the applicants in writing that the fee will be charged and must be received prior to completion of the investigation. The County Department should not release the report of the pre-placement investigation until the full fee has been received.

For post-placement investigations where the pre-placement investigation was completed by a party other than the Department **or** where no pre-placement investigation was completed, the County Department must notify the applicants/petitioners that the fee will be charged and must be received prior to release of the report to the court. The report should not be released until the fee is received.

If any County Department completes a pre-placement investigation and collects the fee, no additional fee is charged for the post-placement investigation.

1. When Fees Can Be Waived

The County Director may waive the fee in the following circumstances when good cause is shown. In all cases involving a waiver of the fee, the case record must be properly documented to reflect the circumstances leading to the decision to waive the fee.

a. Indigence

The County Director shall waive the fee for investigations where the petitioner's gross family* income does not exceed the amounts listed below. When a waiver is requested, the family's income must be verified through their most recent tax return or other documentation.

# of PERSONS	ANNUAL INCOME	MONTHLY INCOME	# of PERSONS	ANNUAL INCOME	MONTHLY INCOME
1	\$ 17,960	\$ 1,497	5	\$ 43,080	\$ 3,590
2	\$ 24,240	\$ 2,020	6	\$ 49,360	\$ 4,113

3	\$ 30,520	\$ 2,543	7	\$ 55,640	\$ 4,637
4	\$ 36,800	\$ 3,067	8	\$ 61,920	\$ 5,160

Note: Add \$ 6,280 annually or \$ 523 monthly for each person when family size exceeds 8.

* Family is defined as the basic family unit consisting of an adult and spouse (including common law) and children less than 18 years, or under 21 years if in school, and who are related by blood, marriage or adoption and are residing in the same household.

b. Child's Best Interest

The County Director may determine that a child's best interest would not be served by requiring the fee for the adoption investigation. The following circumstances include, but are not limited to, situations where a waiver of the fee may be granted.

- The petitioners are related to the child beyond the degree of relationship required by law to exempt them for an investigation and imposition of the fee would prevent the child's adoption.
- The child has lived in the petitioner's home for several years and imposition of the fee would prevent the child's adoption.
- The child's relationship with siblings would be injured or severed if the adoption does not proceed and the imposition of the fee would prevent the child's adoption.
- The child has diagnosed special needs for medical care or appliances, counseling, therapy, educational tutoring, or other treatment and the imposition of the fee would deny the child these services and prevent the child's adoption.
- The child is one of a sibling group of two or more children being adopted by the same petitioners and imposition of the fee would prevent the child's adoption.
- The child's approved foster parents are independently adopting the child with the birth parents' consent and the Department's approval, and imposition of the fee would prevent the child's adoption.
- Other unusual circumstances exist, and the County Director has determined that imposition of the fee would be contrary

- to the child’s best interests and would prevent the child’s adoption.

c. Previous History With DHR

The Department already has sufficient written information in agency written files (e.g., previous home studies, casework activities, investigations) to provide a report to the court on the pending adoption.

2. When Fees Cannot Be Waived

The fee cannot be waived in cases where there has been:

- a violation of Alabama’s statutes relating to adoption and the placement of children for adoption (e.g., placement by an unauthorized party; transporting the child across state lines in violation of the Interstate Compact on Placement of Children, irrespective of later attempts to comply with ICPC); or
- a failure to obtain a pre-placement investigation when one is required.

3. Payment Of Fees

Fees received must be in the form of a certified check or money order made payable to the County Department of Human Resources and should be receipted as usual and clearly marked “Investigation Services for Independent Adoption.” All fees collected should be routed through the County Department’s local accounts and submitted to SDHR Finance at the end of each month.

III. LEGAL PROCESS

The legal adoption of a child should adhere to the following general procedures.

A. Petition To Adopt

Following placement of a child in the home of the prospective adoptive parents, a petition to adopt the child must be filed in the Probate Court within thirty (30) days of placement unless the child is in the custody of DHR or a licensed child-placing agency. A petition for good cause shown may be filed beyond the thirty (30) day timeframe.

Persons wishing to adopt a specific child may file the petition with the Probate Court in the county where they have legal residence or are in military service; in the county where the child lives or has legal residence; or in the county where the agency or institution having custody/guardianship of the child is located.

For independent adoptions, the birth parents’ consent to adopt and a copy of the child’s birth certificate (or an affidavit stating that application for the birth certificate has been

made) must be filed with the adoption petition unless the child has been abandoned. A copy of the pre-placement investigation report must also be filed with the petition.

Code of Alabama, 1975 §26-10E-3 provides that proceedings for the adoption of a child may be transferred to the juvenile court on motion of any party to the proceedings. However, provisions in the adoption statute are still applicable when the proceedings have been transferred to juvenile court.

B. Consents and Relinquishments

In investigating compliance with the consent or relinquishment provisions of the adoption statute, the investigator should determine if consents or relinquishments have been obtained by all parties required to give consent or relinquishment for the child to be adopted. Code of Alabama, 1975 §26-10E-7 provides that the following persons or agencies are required to consent to an adoption.

- The adoptee, if age fourteen (14) years or older, unless the court finds that the adoptee does not have the mental capacity to consent.
- The adoptee's mother and presumed, or legal, father as defined by the Code of Alabama, 1975, §26-10E-7 and §26-10C-1, unless their parental rights have been terminated by the court; or they have relinquished the child to the Department of Human Resources or a licensed child-placing agency for the purpose of adoption; or they have been adjudged by a court to be incompetent or mentally incapable of consenting or relinquishing; or they are deceased or presumed deceased pursuant to Code of Alabama, 1975 §26-10E-10.
- The putative or alleged father, if his identity is made known by the mother or is otherwise known to the court, provided he responds to the notice of the adoption proceedings within thirty (30) days, unless he has signed a statement denying paternity.
- The Department of Human Resources or licensed child-placing agency to which the adoptee has been relinquished or which holds permanent custody of the child and has placed the child for adoption.

A relinquishment signed by the parents legally transfers the child's physical custody to the Department of Human Resources or a licensed child-placing agency, which then has the authority to place the child for adoption. This differs from parental or agency consent to adoption by specific adoptive parents. The Department's policy on acceptance of relinquishment is described in *Termination of Parental Rights*.

Consents or relinquishments may be given before a probate judge, clerk of the court, or other officers appointed by the court to take consents; designated representatives of the Department of Human Resources or a licensed child-placing agency; or a notary public.

A birth mother's consent taken prior to the child's birth **must** be signed or confirmed before a probate judge. The Department of Human Resources cannot take consents in independent adoptions but must verify that the consent was taken by an authorized party. Except for children placed by the Department or a licensed child-placing agency, the petitioners or their attorney are responsible for obtaining the required consents to adopt. It is the court's responsibility to determine and question the validity of the consents or relinquishments, and it is the agency's responsibility to provide the court with the facts concerning the consents or relinquishments.

A child can be legally placed for adoption only by a parent; the parent of a deceased parent; a relative of the degree of relationship specified in §26-10E-27; the Department of Human Resources; a licensed child-placing agency; or an agency approved by the Department of Human Resources as in the case of an out-of-state licensed child-placing agency (*Code of Alabama*, 1975 §26-10E-32). Other persons may not be in the business of placing children for adoption and they will be deemed to be in the business of placing children for adoption if they place more than two (2) unrelated children within a twelve (12) month period.

When the County Department becomes aware of placements by unlicensed or unauthorized parties, the facts should be documented and sent to SDHR's Office of Adoption, Office of Contracts and Federal Claiming (Licensing Consultant), and Office of Interstate Compact on the Placement of Children, if applicable. If the information is obtained in the course of an adoption investigation, the information should also be included in the report to the court.

In interstate placements where a consent is taken out-of-state, the Department will recognize consents or relinquishments to agencies that are taken by persons appointed to take such by any agency which is authorized by the other state's law to conduct investigations and adoption home studies.

When minor parents are consenting to the adoption of their child, a guardian ad litem must be appointed to represent the minor parent's interests prior to the consent giving or relinquishment. Consent of minor parents may not be revoked solely on the basis that they are a minor (§26-10E-8).

1. Forms / Documentation

A consent or relinquishment must be in writing and signed by the person(s) giving consent or relinquishment and must state:

- (a) the date, place, and time of execution;
- (b) the child's name and date of birth, or expected date of birth where the consent or relinquishment was taken prior to the child's birth;
- (c) the relationship of the persons consenting or relinquishing;

- (d) the names of each petitioner unless the document is a relinquishment to the Department of Human Resources or a licensed child-placing agency or, if a consent, the person executing the consent has waived the right to know the petitioner's identity of the petitioners;
- (e) the address of the court in which the petition will be filed, if known, and if not known, the name and address of the agency, petitioners, or their attorney on whom notice of the withdrawal of the consent may be served; and
- (f) if a relinquishment, the name, and address of the agency to which the child is being relinquished.

The consent or relinquishment must also certify that the person:

- executing the document is voluntarily and unequivocally consenting to the adoption;
- understands that the document may be irrevocable and should not be signed if psychological counseling or legal advice is desired;
- forfeits all rights and obligations to the child by signing the document;
- understands that further notice of adoption proceedings are waived by signing the document in conjunction with the subsequent court order ratifying the consent, unless the case is contested or appealed, and if so, the consenter is actually waiving the right to further notice;
- understands the document and executes it freely and voluntarily; and
- has received or been offered a copy of the consent or relinquishment.

The court may find that the parent has provided implied consent or relinquishment if the parents have:

1. Abandoned the adoptee for the immediately preceding four (4) months prior to the filing of the adoption petition;
2. The legal or putative father of the adoptee has failed to offer the mother financial or emotional support during the four months immediately preceding the birth of the adoptee while knowing or having reason to know of the pregnancy.
3. Without good cause or excuse, left the adoptee without provision of his or her identification for a period of thirty (30) days.

4. Voluntarily and knowingly, without good cause or excuse, left the adoptee with another person without personally providing support for, initiating communication with, or otherwise maintaining a substantial relationship with the adoptee for the four (4) consecutive months immediately preceding the filing of the adoption petition.
5. Failed to answer or otherwise respond to the adoption petition after receiving notice within 30 days, This provision applies to an agency, as well. Code of Alabama §26-10E-9 (a), (b).

2. Timing

The law provides that consents or relinquishments may be taken at any time, including prior to the birth of the adoptee. A birth mother's consent must be signed or confirmed before a probate judge when taken prior to the child's birth. The judge must provide the birth mother with an explanation of the legal effect of signing the consent, and the time limits and procedures for withdrawing the consent. The judge must also provide the birth mother with the form for withdrawing consent. Although the law allows parents to sign consents and relinquishments prior to a child's birth, **the Department must not accept a child for placement on a relinquishment signed prior to the child's birth.**

3. Withdrawal

The consent or relinquishment may be withdrawn for any reason within five (5) days after the child's birth or within five (5) days after signing or confirming (before the court) the consent or relinquishment, whichever comes last (Code of Alabama 1975 §26-10E-13). Within this five (5) day period, court action is not required to withdraw the consent. The person withdrawing the consent must simply deliver (or have postmarked) a signed and dated written withdrawal, with the signatures of two (2) witnesses or a notary, to the court within the five (5) day period. (Code of Alabama 1975 §26-10E-14). The parent may withdraw the voluntary consent or relinquishment at any time up until the final decree upon a showing that the consent or relinquishment was obtained by fraud, duress, mistake, or undue influence. If a parent has impliedly given consent to an adoption, it may not be withdrawn by any person (Code of Alabama §26-10E-9(c)) The consent or relinquishment may not be challenged on any grounds after one (1) year from the date of the final decree unless the adoptee has been kidnapped.

4. Putative Father Registry

A father must register with the Putative Father Registry prior to a child's birth or within a thirty (30) day period following birth in order to receive notice of an adoption procedure. Failure to do so within the specified timeframe constitutes an irrevocable implied consent to any adoption proceeding. Registration requires

completion of the Putative Father Intent to Claim Paternity (DHR-ACFC-1934) and a Child Support Obligation Income Statement/Affidavit (CS-41). These forms may be obtained from the Office of Adoption. Anyone adjudicated by an Alabama court or court of another state or U.S. territory to be the father of a child born out of wedlock may also register by filing a certified copy of the court order with the Office Of Adoption. The Putative Father Registry is not a substitute for legal action such as paternity adjudication, legitimation, or securing court ordered custody or visitation. Refer to section I. B. 2 for Office of Adoption responsibilities related to the Putative Father Registry.

C. Notice Of Adoption Proceedings

The petitioner is responsible for serving notice of the adoption proceedings on all persons or agencies required to receive notice (§ Code of Alabama 1975 §26-10E-17). Notice, unless previously waived, must be served on all of the following:

- (1) any person or agency whose consent is required by law;
- (2) the child's legal custodian or guardian, including the director of the county Department of Human Resources, if the child is in foster care,
- (3) the spouse of any petitioner who has not joined in the petition;
- (4) the spouse of the adoptee (if applicable);
- (5) the surviving parent or parents of an adoptee's deceased parent;
- (6) the child's physical custodian, excluding foster parents or licensed child-placing agencies, or person having court-ordered visitation rights;
- (7) the agency or individual appointed by the court to investigate the adoption.
- (8) any other person designated by the court;
- (9) the Alabama Department of Human Resources; and
- (10) the legal father and putative father of the adoptee if made known by the mother or otherwise known by the court.

A copy of the petition must accompany the notice to persons listed in numbers (2) through (10) above and all persons served must respond within thirty (30) days if they intend to contest the adoption.

If the child is in the legal custody of the county Department, the county Director should receive service of the pending adoption. The county Director should contact the State Department of Human Resources Family Service Division to discuss the adoption petition. The county Department and state Department only have 30 days tin which to file a legal pleading regarding the pending adoption, or else consent to the adoption is given by law. (Code of Alabama 1975, §26-10E-9 (b), (c)) If the County Department receives notice of adoption proceedings without having been previously notified of the

proceedings by the State Department of Human Resources, copies of the notice and petition must be immediately sent to the Office of Adoption. The Office of Adoption will send written acknowledgement of the notice's receipt to the appropriate court. A copy of that acknowledgement will also be sent to the County Department, licensed child-placing agency, or other court-appointed investigator. When the court has notified the Department that a specific investigator has been appointed or that information is otherwise available to the Department, the letter will identify who is responsible for the adoption investigation.

D. Interlocutory Order

The court enters an interlocutory order following the child's placement with the petitioners and filing of the adoption petition. In an independent adoption, the interlocutory order grants the petitioners' legal custody of the child. The interlocutory order also grants the petitioners the responsibility for the care, maintenance, and support of the adoptee, including necessary medical or surgical treatment. If the child was placed by the Department of Human Resources or a licensed child-placing agency that held legal custody at the time of placement, custody will be retained by the Department or that agency through finalization of the adoption unless there is a relinquishment.

E. Dispositional Hearing And Final Decree

Following receipt of the pre-placement investigation report, unless the court has waived the investigation, the court will schedule the adoption petition for a dispositional hearing. The dispositional hearing must be set within 120 days after filing the petition when a pre-placement investigation has been completed and filed with the court **or** when the investigation was waived for good cause. If a pre-placement investigation has not been conducted and the investigation was not waived by the court, or when the adoptee is a special needs child, the dispositional hearing must be set within 120 days after filing the petition.

The court may set the dispositional hearing earlier than 120 days, as noted above, when all required information has been received and the child has been in the petitioners' physical custody for sixty (60) days, or the time requirement is waived by the court for good cause.

Upon entry of the Final Decree of Adoption, the adoptee's birth parents (except when the birth parent is the adopting parent's spouse as in a stepparent adoption) are relieved of all parental responsibility for the adoptee and no longer have any parental rights over the adoptee. The adoptee will take the name designated by the adoptive parent(s) and will be treated as the natural child of the adopting parent(s), thereby having all rights and duties of a natural child of the adoptive parent(s), including the right of inheritance. Adoptees may not inherit from their birth parents or other biological family who die intestate.

The court forwards a copy of the final decree to the Office of Adoption, and at that time, the LCPA, PIP or County Department is required to send two (2) separate summaries to the Office of Adoption. These summary sheets must also be submitted on children placed for adoption by LCPAs.

The Summary Of Identifying Information (DHR-FCS-1767) must be sealed and contain the following:

- The adoptee's birth name and adoptive name.
- The adoptee's place and date of birth, unless abandoned.
- The circumstances under which the child was placed for adoption.
- The adoptee's physical and mental condition insofar as it can be determined by a competent medical authority.

- Whether the identity and location of the birth father is known or ascertainable, and if so, the following information for him.
- The names and last known address(es) of the child's birth parents; their dates of birth and Social Security numbers, if known.
- The birth parents' age at the time of the child's birth.
- The birth parents' nationality, ethnic background, race, and religious preferences.
- The birth parents' educational level.
- Information pertaining to pre-adoptive brother/sister relationships.

The Summary Of Non-Identifying Information (DHR-FCS-1768) must contain the Following:

1. The adoptee's health and medical history.
2. Health and medical histories for the adoptee's birth parents.
3. The adoptee's general family background, including ancestral information, without name references or geographical designations.
4. Physical descriptions of family members.
5. The length of time the adoptee was in the care and custody of anyone other than the petitioner.
6. The circumstances under which the child was placed for adoption.

F. Certificates Of Birth And Adoption

The court sends a copy of the final decree and a completed Alabama Report of Adoption (ADPH-HS-17) to the State Registrar, Center for Health Statistics at the State Department of Public Health in order to get the child's new birth certificate prepared. The child's original birth certificate must be provided to the Center for Health Statistics by the placing agency (i.e., DHR or LCPA).

There may be considerable difficulty preparing the new birth record if there are any discrepancies between the final decree, the child's original certificate of birth, and the HS-17. This underscores the importance of letting petitioners know, early in the adoption proceedings, about any error or inconsistencies that may appear so they may make corrections before the adoption is completed.

When all required documentation is in order, the Center for Health Statistics prepares a new Certificate of Birth (VS-34) and sends notice to the adoptive parents explaining how they may obtain the new birth certificate, its costs and payment method. The Center for Health Statistics then seals and files the adoption information according to Alabama law.

The Center for Health Statistics prepares a Certificate of Adoption (VS-63) in the following situations:

- the adopted person was allegedly born in Alabama, but a certificate of birth was not; and
- the adopted person was born outside of Alabama. The Center for Health Statistics notifies the state of birth that a Final Decree of Adoption has been issued and forwards the HS-17 and final decree to them and retains a copy. The state of birth outlines the procedure for securing a certificate of adoption in that state. A fee is charged to the adoptive parents for this service.

Adult adoptees, age nineteen (19) years and older, may obtain a copy of their original birth certificate and any other documents in the sealed files from the Department of Public Health, Center of Health Statistics. Birth parents are able to place Parent Contact Preference and Medical History forms in the sealed file. The Parent Contact Preference allows birth parents to state if they (1) wish to be contacted; (2) prefer to be contacted through an intermediary; or (3) prefer not to be contacted. When adult adoptees or birth parents request this information; they should be referred to:

Alabama Department of Public Health
Center for Health Statistics, Adoption Search
RSA Tower, 201 Monroe Street
Montgomery, AL 36130

G. Court And Agency Records

After the petition is filed and prior to entry of the final decree, the court records of the adoption proceedings are only open to inspection by the petitioners or their attorney; the investigator; and any attorney representing the adoptee, except upon court order for good cause. Court proceedings in adoption proceedings are confidential and not open to persons other than the parties in interest and their attorneys, except by order of the court. After the final decree has been entered, the court records are sealed, kept as a permanent

record of the court, and withheld from inspection, except by order of the court which entered the final decree.

All adoption files in the Department or other investigating agency are confidential and may not be inspected without with a court order. If a County Department receives a court order for production of records, the Office of Adoption must be notified, or consultation sought with the Legal Office since there are several state statutes that protect the confidentiality of the DHR records.

H. Contested Hearings

If a motion is filed by any party contesting an adoption, the court will set the matter for a contested hearing. Guardians ad litem must be appointed for the adoptee and any minor birth parents. The court is required to give notice to all parties who have appeared before the court in the adoption, including the party contesting the adoption and the petitioners.

Based upon the court's findings, the adoption proceedings may be dismissed or the motion to dismiss may be denied.

A contested hearing may be transferred to juvenile court upon motion of any of the parties or on the court's own motion. If the contested hearing is held in Probate Court, the judge may proceed immediately to the dispositional hearing after completion of the contested hearing.

In cases involving wards of the Department and the Department has not consented to the adoption or there is other reason to contest the adoption proceedings, the County Department must contact the Office of Adoption as soon as there is an indication that adoption proceedings have been initiated or that there is a need to contest the proceedings.

I. Related Proceedings

If it is determined at any point during adoption proceedings that other custody actions concerning the adoptee are pending in any other court, a motion must be filed to stay the adoption proceedings until a determination is made on the pending custody action. If the County Department becomes aware of pending custody actions during the course of an adoption investigation and the Department is a party to the proceedings, the County Department must file a motion to stay the adoption proceedings. If the Department is not a party, the worker must immediately make the court aware of the pending custody proceedings and of the need to stay the adoption proceedings.

J. Appeals

Appeals from any Final Decree of Adoption are filed with the Alabama Court of Civil Appeals and must be filed within fourteen (14) days from the date of the final decree. If the Department is the appellant, the matter is handled by SDHR's Legal Office. When an appeal of an adoption order involving a child in DHR permanent custody is indicated,

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consultation must be immediately sought from the Office of Adoption and SDHR Legal Office.