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February 27, 2009

ALL COUNTY LETTER NO. 09-10

TO: ALL COUNTY WELFARE DIRECTORS
ALL PRIVATE ADOPTION AGENCIES
ALL CDSS ADOPTION DISTRICT OFFICES
ALL COUNTY ADOPTION AGENCIES

SUBJECT: INTERCOUNTRY ADOPTIONS

REFERENCES: HAGUE CONVENTION ON INTERCOUNTRY ADOPTION (HCIA);
INTERCOUNTRY ADOPTION ACT OF 2000 (IAA); TITLE 22 CODE
OF FEDERAL REGULATIONS (CFR) PARTS 96, 97, 98, 99;
SENATE BILL (SB) 703 (CHAPTER 583, STATUTES OF 2007)

The purpose of this All County Letter (ACL) is to instruct county child welfare agencies, as well as public and private adoption agencies, on recently enacted federal and state law changes that impact intercountry adoptions. The HCIA is an international agreement between approximately seventy-five participating countries regarding intercountry adoption guidelines and procedures, which was signed into law in 2007, and became effective in the United States on April 1, 2008 (22 CFR Parts 96, 97, 98 and 99.) These guidelines and procedures were implemented to protect birth families and adoptive families and to prevent the abduction, exploitation, sale or trafficking of children involved in intercountry adoptions.

Although intercountry adoptions usually do not involve county and state public adoption agencies, there are situations where such adoptions involve dependent children. According to Title 22 CFR Section 96.16, public adoption agencies do not need to be accredited to practice these types of adoptions. However, county and state public adoption agencies should be aware that the requirements for emigrating children (see page six of this ACL) need to be followed for all children emigrating from the State of California for the purpose of adoption in a foreign country.

REASON FOR THIS TRANSMITTAL

- State Law Change
- Federal Law or Regulation Change
- Court Order
- Clarification Requested by One or More Counties
- Initiated by CDSS

The United States Secretary of State (SOS) is the central authority for the Hague Convention in the United States (U.S.) and oversees the Council on Accreditation (COA) as the national accrediting entity.

ACCREDITATION PROCESS

Within the U.S., an adoption agency providing intercountry adoption services must be accredited by the COA (22 CFR Section 96.12). The SB 703 amended Family Code section 8900 to require full service and non-custodial adoption agencies to become accredited, or supervised by an accredited primary provider, as a condition of licensure in California. The requirement of accreditation, or supervision by an accredited provider, applies to all private intercountry adoption agencies, regardless of whether the agency is providing intercountry adoption services in connection with an adoption from a Convention or Non-Convention country.

An exempt provider is a social worker or organization that provides the home study on a prospective adoptive parent(s) or the child background study and no other adoptive service. An exempt provider does not need to be an accredited or supervised provider as its role is limited and does not extend to the adoptive placement of a child in an adoptive home. Therefore, an exempt provider must have a contractual relationship with a licensed California adoption agency.

In connection with an adoption from a Convention or Non-Convention country, agencies or individuals interested in the accreditation process may contact the COA at (212) 797-3000 or www.coanet.org. **Public adoption agencies are exempt from this requirement.**

Once accreditation is granted, a copy of the approval must be sent to your Community Care Licensing Division (CCLD) analyst. The agency may not provide intercountry adoption services unless and until it becomes accredited or is being supervised by an accredited agency or is acting only as an exempt provider.

If the agency is dually licensed to provide both domestic and intercountry adoption services, it may proceed with domestic adoptions until accreditation or supervision has been secured.

PROVISIONAL LICENSE

For new intercountry adoption agencies, COA requires the intercountry adoption agency to obtain a license from CCLD prior to accreditation. The CCLD will issue a provisional license until the agency is accredited by the COA or enters into an agreement with a primary provider and is supervised by the primary provider. If the adoption agency is

not accredited or does not have a signed agreement with a primary provider within 12 months of the issuance of a provisional license, then a permanent license will not be issued. Further, until the agency becomes accredited by the COA or has a signed agreement with a primary provider, it shall not provide intercountry adoption services.

If the agency has a provisional license to perform both intercountry and domestic adoptions, they may proceed with domestic adoptions until accreditation or a signed agreement with a primary provider has been secured. If an agency is denied accreditation or does not have a signed agreement with a primary provider, but is proceeding with domestic adoptions, a permanent license may be issued for domestic adoptions only if the agency is compliant with applicable licensing laws and regulations. Upon accreditation or the completion of a signed agreement with a primary provider, CCLD will issue a permanent license to the intercountry adoption agency. If you would like more information or have any questions, please contact your local regional CCLD office: <http://www.cclid.ca.gov/res/pdf/cclistingMaster.pdf>.

PRIMARY AND SUPERVISED PROVIDERS

A supervised provider is any agency, person, or other nongovernmental entity that provides adoption services in an intercountry adoption while under the supervision of a primary provider. The primary provider ensures that a supervised provider is in compliance with state licensing and regulatory requirements in each jurisdiction in which it provides adoption services. The primary provider must be accredited regardless of whether they provide adoption services in Convention or Non-Convention countries (or both). Primary providers using foreign supervised providers must ensure that the foreign supervised provider is in compliance with the laws of the Convention country in which it operates (22 CFR Section 96.46).

Federal and state laws require the adoption agency acting as a primary provider to execute a written agreement with each domestic supervised provider containing all of the following:

- 1) The adoption service(s) to be provided by the supervised provider, and a requirement that each service be provided in accordance with applicable state and federal laws;
- 2) A requirement that the supervised provider comply with the following sections of the HCIA:
 - a. 22 CFR § 96.36 – Prohibition on child buying;
 - b. 22 CFR § 96.34 – Compensation;
 - c. 22 CFR § 96.38 – Employee training;

- d. 22 CFR § 96.39 (d) – Waivers of liability;
- e. 22 CFR § 96.41 (b) through (e) – Complaints.

The agreement must identify the lines of authority between the primary and supervised provider, the employee of the primary provider who will be responsible for supervision, and the employee of the supervised provider who will be responsible for ensuring compliance with the written agreement;

- 3) The compensation arrangement for the services to be provided, including the fees and expenses to be charged by the supervised provider;
- 4) Whether the supervised provider's fees and expenses will be billed to and paid by the client directly or billed to the client through the primary provider;
- 5) If the supervised provider bills the client directly, the supervised provider will give the clients an itemized bill of all fees and expenses to be paid, including how and when such fees will be refunded if the service is not completed and will return any funds collected to which the client may be entitled within 60 days of completion of the delivery of the service;
- 6) A requirement that the supervised provider meet the same personnel qualifications as accredited agencies;
- 7) A requirement that the supervised provider limit the use of and safeguard personal data;
- 8) A requirement that the supervised provider:
 - a. Respond within a reasonable period of time to any request for information from the primary provider, SOS, or COA; and California Department of Social Services (CDSS);
 - b. Provide the primary provider with any data necessary to comply with the primary provider's reporting requirements in a timely manner; and
 - c. Disclose any changes in the suitability of the information required by 22 CFR Section 96.35.
- 9) A requirement that the supervised provider disclose any negative actions taken against the supervised provider by the COA or any licensing authority; and
- 10) A provision permitting suspension or termination of the agreement on reasonable notice if the primary provider has grounds to believe that the supervised provider is not in compliance with the agreement.

For foreign supervised providers in Convention countries, written agreements with the primary provider must also include:

- 1) A requirement that the foreign supervised provider comply with all medical and social information standard contained in 22 CFR Sections 96.49(d) through (j).
- 2) A requirement that the foreign supervised provider adhere to the HCIA's prohibition on child buying and have written policies in place and provide training to its employees on these policies; and
- 3) A prohibition on compensation of the foreign supervised provider's employees on a per child or contingency fee basis.

The primary provider must send a copy of all written agreement(s) with supervised providers CCLD [Family Code 8900(c)].

HOME STUDY

A home study is mandatory for prospective adoptive parents and must be completed in accordance with state law and regulations, as well as 22 CFR Section 96.47 for a child emigrating from a Convention country. The home study gathers information on the prospective adoptive parent's identity, their background, eligibility and suitability to adopt, reasons for wanting to adopt and ability to undertake an intercountry adoption.

Information is gathered on the family, the medical history, social environment, and the characteristics of the children for whom the prospective adoptive parents would be qualified to care. The home study includes a statement describing the counseling and training provided to the prospective adoptive parents, the results of a criminal background check, and a complete statement of facts relevant to the eligibility to adopt a child, which will vary depending upon the requirements identified by the Central Authority in the child's country of origin. Further requirements for the assessment of the prospective adoptive applicants and intercountry home study can be referenced at Title 22 California Code of Regulations (CCR) Section 35273 et seq. In addition, in a Convention adoption, the agency or person must provide a copy of the home study to the prospective adoptive parents, to the Department of Homeland Security, and to the Central Authority in the child's country of origin (22 CCR Section 35273 et.seq.).

In a Convention adoption, if a home study is not completed by an accredited agency, the home study must be reviewed by an accredited agency to ensure it was performed in accordance with state law and by an individual who meets HCIA requirements.

MEDICAL AND SOCIAL INFORMATION REQUIREMENTS

Pursuant to 22 CFR Section 96.49, all accredited agencies are required to provide medical and social information about the child to the prospective adoptive parents to the fullest extent possible, no later than two weeks before either the adoption or placement for adoption, or the date on which the prospective adoptive parents travel to the Convention country to complete proceedings relating to the adoption, whichever is earlier. Family Code Section 8909 (a) mandates that the agency provide a written report on the child's medical background and, if available, the medical background of the child's biological parents, to the prospective adoptive parents prior to placement. The report on the child's background shall contain all diagnostic information, including current medical reports on the child, psychological evaluations, and scholastic information and all known information regarding the child's developmental history and family life. Further information can be found in Title 22 CCR Sections 35275 through 35287 for the assessment of the child and 22 CCR Sections 35289 through 35295 for the background information to be gathered on the birth parents.

Likewise, 22 CCR Sections 35277 and 35279 require the agency to obtain the following documentation from the foreign agency responsible for the child: Identifying information, medical reports, psychological evaluations, scholastic information, developmental history, family life history, race and ethnic background, religion, and a certified copy of a birth certificate. If any of this information is unavailable, the agency is required to document the unavailability and the reasons for its unavailability (22 CCR Section 35281).

POST-PLACEMENT MONITORING AND POST ADOPTION SERVICES

The primary provider is responsible for taking all appropriate measures to ensure that the transfer of the child takes place in secure and appropriate circumstances and is supervised by qualified staff and if possible in the company of the prospective adoptive parents (22 CFR Section 96.50).

Placement must be monitored by the primary provider prior to finalization to ensure the child receives the required number of home visits [22 CFR Section 96.50(b)]. Accredited agencies are required to inform the prospective adoptive parent(s) in the adoption services contract whether they will or will not provide any post-adoption services [22 CFR Section 96.51(b)]. When post-adoption reports are required by the child's country of origin, the agency must include a requirement for such report(s) in the adoption services contract and make good faith efforts to encourage adoptive parents to provide such reports [22 CFR Section 96.51(c)]. Further information on post adoption services and post placement visits can be referenced in 22 CCR Sections 35299 through 35311.

ADOPTIONS IN NONCONVENTION COUNTRIES

While some of the above requirements cannot be applied to intercountry adoptions in Non-Convention countries, accredited private intercountry adoption agencies in California are responsible for complying with the requirements of the HCIA, to the best of their ability, because the U.S. is a member of the Convention.

REQUIREMENTS FOR EMIGRATING CHILDREN

When a child (dependent or nondependent) is emigrating from California to a Convention country, the accredited agency or primary provider delivering the adoption service shall conduct a background study on the child, in accordance with 22 CFR Section 96.53. The agency must also obtain all consents in accordance with state and federal law and transmit these to the SOS [22 CFR 96.53(c)]. If the child is twelve years of age or older, the agency must give due consideration to the child's wishes or opinions before determining that an intercountry adoption is in the child's best interests (22 CFR Section 96.53 and Family Code 8924). In addition, the agency must demonstrate reasonable efforts to find a timely domestic placement for the child.

Any party involved in an outgoing adoption may apply to the U.S. Department of State for a Hague Adoption Certificate or Hague Custody Declaration (Title 22 CFR Section 97.2). The application for a Hague Adoption Certificate or Custody Declaration for a Convention adoption from the United States (Form DS 5509), can be accessed as follows: www.adoption.state.gov/hague/outgoing/certificates.html.

For all Convention and Non-Convention adoption cases involving children emigrating from California to a Convention country, the agency or public agency providing adoption services must report information to the SOS in accordance with 22 CFR Section 99.2. The following identifying information must be reported to the SOS by the primary provider in a Convention adoption, or the agency with child placement responsibility in a Non-Convention case, within 30 days of learning that the case involves emigration of a child from California to a foreign country:

1. Name, date of birth of the child and place of birth of child;
2. The country to which the child is emigrating;
3. Whether the final adoption is taking place in California or in the country where the child is emigrating; and
4. Name, address, phone number of the agency.

The agency is also required to report to the SOS the following information within 30 days of its occurrence:

1. The date the case determined to involve emigration from California;
2. The date of final California adoption or date on which custody for purpose of adoption was granted in California;
3. The date of foreign final adoption, where finalization occurs abroad; and
4. Any additional information requested by the SOS.
5. For more information on emigrating cases, please see the U.S. publication "A Guide to Outgoing Cases from the United States" at the following webpage: <http://adoption.state.gov/pdf/OutgoingCasesFAQs.pdf>.

DISRUPTED PLACEMENTS

The agency must include in the written agreement the agency's responsibilities if the placement for adoption is disrupted. The agreement must address who will have legal and financial responsibility for transfer of custody of the child in an emergency or in the case of impending disruption and who is responsible for notification to the Central Authority of the child's country of origin and the SOS. The agency may not return a child to a foreign country that was placed for adoption in the U.S. unless the Central Authority of the country of origin and the SOS has approved the return in writing.

ENFORCEMENT AND COMPLAINTS

The COA will monitor accredited agencies at least annually to ensure that they are in substantial compliance with the HCIA standards.

Any complaints by an individual about an accredited agency should first be submitted to the agency providing the adoption services. If it cannot be resolved, the complaint can then be filed with the Complaint Registry of the SOS. The SOS has established a complaint registry to receive and maintain records of complaints; track compliance with deadlines applicable to the resolution of complaints; and generate reports. A state or local government official may also file a complaint with the Registry. In addition to filing a complaint with the SOS, individuals or government entities can also file complaints with their local CDSS Community Care Licensing Office.

The COA must record, investigate and act on complaints and may conduct unannounced site visits to inspect the agency's compliance with HCIA standards. The

COA must report to the SOS any **substantiated** complaint of serious, willful, grossly negligent pattern of conduct, repeated failure to comply, or a pattern that indicates continued accreditation or approval would not be in best interest of the child or families concerned. The COA must also report to the Attorney General, state licensing authority or other law enforcement any **substantiated** complaint involving civil or criminal penalties, or violation of state, federal or local law.

Complaints can be filed on the SOS website at: <http://adoptionusca.state.gov/HCRWeb/>.

For questions related to this ACL in regard to CCLD licensing policies and requirements for intercountry adoption agencies, please contact Jackie Shelley, (Technical Assistance and Policy Branch) CCLD, at (916) 323-2184. For questions related to the HCIA and state and federal intercountry adoption policy requirements, please contact Ty Morgan, (Child and Family Youth Permanency Branch) Concurrent Planning Policy Unit, at 1(916) 657-1858, or me at (916) 657-2614.

Sincerely,

Original Document Signed By:

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c: County Welfare Directors Association
Academy of California Adoption Lawyers