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Informational Letter

Transmittal:	08-OCFS-INF-12
To:	Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies
Issuing Division/Office:	Strategic Planning and Policy Development
Date:	November 7, 2008
Subject:	2008 Statutory Amendments Concerning Surrenders and the Provision of an Adoption Information Registry Birth Parent Registration Consent Form and the Impact of the Death of a Prospective Adoptive Parent Before the Completion of the Adoption
Suggested Distribution:	Directors of Services Adoption Supervisors Foster Care Supervisors Child Welfare Executive and Legal Staff
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Attachments:	DOH-4455 Adoption Information Registry Birth Parent Registration Form
Attachment Available Online:	http://www.health.state.ny.us/vital_records/adoption.htm

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
01-OCFS-INF-06			DRL §§ 112, 113-a, 115-b and 115-e PHL §§ 4138, 4138-c and 4138-d SSL §§ 383-c and 384		

I. Purpose

The purpose of this Informational Letter (INF) is to provide information to local departments of social services (LDSS) and voluntary authorized agencies regarding recently enacted legislation approved by the Governor that impacts adoption practice, specifically relating to the taking of surrenders and the completion of an adoption proceeding where one of the prospective adoptive parents dies after the filing of the adoption petition but before the completion of the adoption. The new laws are:

- *Chapter 160 of the Laws of 2008* (effective July 7, 2008) - amended the Domestic Relations Law (DRL) in relation to the continuation of the adoption proceeding when a petition for adoption by married persons is filed but one of the petitioners dies before the adoption is legally complete.
- *Chapter 435 of the Laws of 2008* (effective November 3, 2008) - amended the DRL, the Social Services Law (SSL), and the Public Health Law (PHL), in relation to the provision of an Adoption Information Registry Birth Parent Registration Consent form when a birth parent executes either a consent to the adoption of his/her child or a surrender of guardianship and custody to an authorized agency.

II. Background

Chapter 160 of the Laws of 2008 - Prior to this amendment taking effect, if one of the prospective adoptive parents died after the adoption petition was filed but prior to the completion of the adoption, the adoption proceeding was halted, and the surviving prospective adoptive parent had to reapply for the adoption and complete a whole new set of forms to be able to proceed with the adoption. In such a case, upon filing a new adoption petition and the court granting the order of adoption, only the parent who was alive at the time the

adoption was finalized was included on the new birth certificate of the adopted child as his or her parent. This was true irrespective of how long the foster child had been in the home of the deceased prospective adoptive parent, the level of involvement the prospective adoptive parent had with the child or the attachment the child had with the deceased prospective adoptive parent.

Chapter 435 of the Laws of 2008 - The Adoption Information Registry (registry) was established in 1984 within the New York State Department of Health (DOH). The registry provides a mechanism for adoptees and their birth parent(s) to access identifying information through dual consent. However, prior to this new law taking effect, according to the amendment's sponsor, many birth parents whose children were adopted were unaware of the existence of the registry; therefore, their birth children were not able to avail themselves of identifying information, medical histories, and information regarding his or her family history, ethnic and religious heritage. Also, the registry could not accept the registrations of either birth parent(s) until the adoptee was 18 years old; consequently, there were circumstances where the birth parent may have died in the intervening years between relinquishing the child and the child turning 18 and applying to the registry because he or she desired identifying information. In order to release identifying information, the consents of both the adoptee and the birth parents are mandatory.

III. Program Implications

Chapter 160 of the Laws of 2008 - Chapter 160 of the Laws of 2008 addresses the issue of one prospective parent dying after the adoptive petition is filed but prior to the adoption being legally complete. It allows this situation to be treated as a change in circumstance' thus, the death of one adoptive parent will not automatically cause a new petition for adoption to be filed. However, this change in circumstance may be reviewed by the court to assess if the adoption is still in the child's best interest. The authorized agency that is consenting to the adoption should conduct a similar assessment for case planning purposes.

The amendments also state that the deceased adoptive parent must be considered one of the legal parents of the child, unless the surviving adoptive parent requests otherwise. As such, if the adoption is completed with the surviving adoptive parent, the deceased adoptive petitioner's name will also be listed as parent on the new birth certificate, unless otherwise requested by the other adoptive parent.

Prior to this new law, there was a process for a deceased parent to be recorded as a parent on the birth certificate of an adopted child; however, this process was completed only by enacting legislation for individual families. The amendments will eliminate the need to pursue such legislation.

Chapter 435 of the Laws of 2008 - Chapter 435 of the Laws of 2008 amends sections 383-c and 384 of the SSL to provide that when an authorized agency is taking a surrender of guardianship and custody, the surrender must include an Adoption Information Registry Birth Parent Registration Consent form. The Adoption Information Registry Birth Parent Registration Consent form, to be developed by DOH, must state whether or not the birth parent or birth parents executing the surrender consent to the receipt of identifying information by the child to be adopted upon registration by such child with the Adoption Information Registry after the child reaches the age of 18. The Adoption Information Registry Birth Parent Registration Consent form is revocable by either birth parent at any time. The form is deemed revoked by both parents if either birth parent revokes such form.

The failure of a birth parent to complete the Adoption Information Registry Birth Parent Registration Consent form has no effect on the finality of the adoption.

The new law provides for a similar process where a consent to adopt in regard to a private adoption is being executed.

Chapter 435 directs DOH to develop the Adoption Information Registry Birth Parent Registration Consent form. This form will advise the birth parent that it is the responsibility of the birth parent to update the Adoption Information Registry of any changes in contact information. In addition, the form must advise the birth parent of the Adoption Medical Sub-Registry administered by DOH, and the procedure to add information to that sub-registry. Notification of any change in contact information is especially important for the medical registry as the health of the adoptee may be affected by any hereditary illnesses and/or biological predispositions which may be unknown at the time of the surrender and/or consent to adoption, but are later discovered.

A copy of the Adoption Information Registry Birth Parent Registration Consent form is appended to this INF. The form can also be accessed on the DOH Adoption Information Registry site at:

http://www.health.state.ny.us/vital_records/adoption.htm

Please note that the Judicial and Extra-Judicial Surrender Forms used in conjunction with the new Adoption Information Registry Birth Parent Registration Consent form can be accessed at:

<http://www.ocfs.state.ny.us/main/legal/legislation/permanency/surrenders.asp>

Chapter 435 also amended other processes of the DOH Adoption Information Registry. Though the child still cannot register until age 18, the birth parent may now give his/her consent at the time of surrender or consent to adoption, for the child to receive identifying information regarding the parent. This new law also authorizes the Adoption Information Registry to accept Adoption Information Registry Birth Parent Registration forms at any time. If the child

then registers at age 18 or older, he or she will be able to access the registry records regarding his or her birth parent.

A copy of completed Adoption Information Registry Birth Parent Registration Consent forms will be forwarded to the Adoption Information Registry with copies of the original and amended birth certificates. Additionally, the new law requires the New York City Department of Health to forward pertinent birth and adoption records, in addition to the Adoption Information Registry Birth Parent Consent form, to the Adoption Information Registry.

/s/ Nancy W. Martinez

Issued By:

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