

Adoption Law and Process in the District of Columbia, Maryland, and Virginia

TABLE OF CONTENTS

Adoption Law and Process in the District of Columbia, Maryland, and Virginia	Tab 1
(with detailed table of contents)	
<i>Peter J. Wiernicki and Jennifer Fairfax</i>	
Adoption Articles	Tab 2
▪ Exploring the Adoption Options.....	p. 1
<i>Peter J. Wiernicki</i>	
▪ When You Adopt Under the Laws of Another Country: U.S. Readoption Explained.....	p. 4
<i>Peter J. Wiernicki</i>	
▪ Birthfathers’ Rights: A Legal Guide.....	p. 6
<i>Peter J. Wiernicki</i>	
▪ Adoption Law: At the Hospital.....	p. 8
<i>Peter J. Wiernicki</i>	
About the Speakers	Tab 3
MCLE Course Information	Tab 4

D.C. Bar: Adoption Law and Process in the District of Columbia, Maryland and Virginia

Peter Wiernicki, Esq.
Jennifer Fairfax, Esq.

Contents

Types of Adoption	2
A. District of Columbia	2
B. Maryland	2
C. Virginia	3
Private v. Public Adoptions	6
A. Domestic: Public Agency Adoption	6
B. Domestic: Private Agency Adoption	6
C. Domestic: Independent Adoption	6
Termination of Parental Rights	8
A. Choice of Law	8
B. District of Columbia	8
C. Maryland	8
D. Virginia	9
E. Addressing the parental rights of the birth father.	9
The Home Study	9
A. Maryland	9
1. Method of Private Home Study Process - COMAR 07.02.12.10 .10	9
2. <i>Method</i> of Foster Parent Home Study. COMAR 07.05.02.11 .11	12
B. District of Columbia	15
1. § 16-307	15
Implications of ICPC	17
A. Maryland – Annotated Code of Maryland, Family Law §5-601 et. seq.	18
B. District of Columbia - D.C. Code Sec. 32.1041 et. seq.	18
C. Virginia – Va. Code Section 63.2-1000	18
Filing the Petition for Adoption	18
A. Maryland	18
B. District of Columbia	21
C. Virginia	21
Working with Birth Parents	22
State and Local Services	22
Medical care and Insurance coverage	23
Protections Under Federal Law	23
COBRA and HIPAA	23
Individual Plans	24
Role of the Guardian Ad Litem	24
Adoption of a Special Needs Child	25
Adoption Subsidy Definitions	25

Types of Adoption

A. District of Columbia

1. The District of Columbia's core statutes on adoption are codified at D.C. Code §16-301, et. seq.

2. There are two types of adoption in the District of Columbia. Agency adoption which can be either a private agency or government agency and Private adoption in which adoption arrangements are made directly between one or both of the birth parents and the adoptive parents.

3. Statutes of Importance

- Who May Adopt

Citation: Ann. Code § 16-302

Any person may adopt. A married person must petition jointly with his or her spouse, unless the other spouse is the natural parent of the adoptee.

- Who May Be Adopted

Citation: Ann. Code § 16-303

Any minor or adult may be adopted.

- Who May Place a Child for Adoption

Citation: Ann. Code § 4-1405

Only the following may place a child for adoption:

- The parent
- A guardian
- A relative within the third degree
- A licensed child-placing agency

B. Maryland

1. (Maryland Adoption Statutes (1999) Family Law, Sections 5-301 to 5-330; 5-401 to 5-415; 5-4A-01 to 5-4A-08; 5-4B-01 to 5-4B-12; 5-4C-01 to 5-4C-07) Located online at <http://mlis.state.md.us/>

2. Maryland statutes establish two kinds of adoptions in the State: agency and independent. An agency adoption is an adoption arranged by a child placement agency, including a local department of social services. An independent adoption is an adoption in which the arrangement is made directly between the birthparents and the adopting parents. Independent adoption includes the adoption by a stepparent of a child born to the stepparent's spouse from another relationship. A recent hybrid adoption is the "designated adoption." This kind of adoption does not fall within the statutory definitions, but is a combination of independent and agency adoption. An adopting parent(s) identifies birthparent(s), who agree to place the child with them for adoption. The parties then work with an adoption agency to provide support and counseling to the birthparents and conduct a home study of the adopting

couple. The birthparents place the child for adoption with the agency like an agency adoption and the agency places the child with the designated couple for adoption (assuming they are home study approved). The adoption then proceeds as an agency adoption.

3. Statutes of Importance

- Who May Adopt

Citation: Family Law §§ 5-331; 5-3A-29; 5-3B-13

Any adult may petition to adopt a child. If a petitioner is married, the petitioner's spouse shall join in the petition unless the spouse:

- Is separated from the petitioner
- Is not competent to join in the petition
- Is a parent of the child and consents to the adoption

- Who May Be Adopted

Citation: Family Law §§ 5-331; 5-3A-29; 5-3B-13

Any adult or child may be adopted.

- Who May Place a Child for Adoption

Citation: Family Law §§ 5-331; 5-3A-29; 5-3B-13

The child may be placed by any of the following:

- A parent or grandparent when the child is placed for adoption with a relative of the child by blood or marriage
- A parent or grandparent when the child is placed with a petitioner who is not a relative of the child and the adoption petition is filed with and the placement sanctioned by the court
- A local Department of Social Services that has custody of the child
- A child-placing agency

C. Virginia

1. Agency adoption in Virginia is conducted through either public child placing agencies (e.g. county department of social services) or private agencies (licensed childplacing agencies privately owned and operated). A birth parent wishing to place a child for adoption through an adoption agency must execute an entrustment agreement which provides for the termination of all parental rights and responsibilities. An entrustment agreement terminating parental rights may be revoked by a birth parent up to the time the child has reached the age of 10 days and 7 days have elapsed from the date of execution of the agreement. Additionally an entrustment agreement is revocable prior to the entry of a final order of adoption upon a showing of fraud or duress. A birth parent's revocation of an entrustment agreement to an agency must be in writing and signed by the birth parent. Adoptive parents who receive a child through a Virginia adoption agency will file a petition for adoption in the circuit court in their county of residence after (a) the child has resided in their home for at least 6 months and (b) they have been visited by their agency three times within that 6-month period.

2. Birth parents in Virginia may also place a child directly with adoptive parents. In a parental placement adoption, the birth parent consents directly to the adoption of his or her child by the chosen adoptive parents. Legal custody of the child passes directly from the birth parent(s) to the adoptive parents. In Virginia, adoptive parents may learn of birth parents either through word-of-mouth contacts or newspaper advertisements. If adoptive parents choose to pursue a parental placement adoption, they must undergo a home study by a licensed child-placing agency in Virginia. When the child to be adopted is at least 3 days old, the birth mother will execute her consent to the adoption before a judge of the Juvenile and Domestic Relations District Court and in the presence of the adoptive parents. The court may accept the consent of the birth mother only after making specific findings as set forth in the Virginia Code. Prior to the court's acceptance of the birth mother's consent, the adoptive parents and the birth mother must participate in counseling conducted by the agency that prepared the home study. Just like the birth mother, the birth father of the child to be adopted may participate in the consent process by (i) participating in the counseling, and (ii) appearing in court to execute his consent to the adoption. However, the consent of a birth father in court is not necessary if

- (a) the birth father consents under oath and in writing to the adoption outside of court;
- (b) the identity of the birth father is not reasonably ascertainable;
- (c) the birth father's whereabouts are unknown; or
- (d) the birth father named by the birth mother denies paternity of the child under oath and in writing.

A birth parent executing his or her consent to an adoption may revoke that consent for any reason for up 7 days after the consent is signed, but that revocation period can be waived once the child is 10 days of age. A revocation must be in writing, signed by the revoking birth parent or attorney representing that birth parent and filed with the clerk of the court in which the consent petition was filed. Adoptive parents who have received a child through a parental placement adoption will file a petition for adoption in the circuit court in the county where they reside. The circuit court will enter an interlocutory order which triggers a probationary period. During that period, the adoptive parents must undergo three post-placement visits by the child-placing agency that conducted their home study. Following the completion of the visits, the agency will prepare a report of visitation which will be filed with the court. The court may then enter a final decree of adoption.

3. Statutes of Importance

Who May Adopt

Citation: Ann. Code §§ 63.2-1201; 63.2-1201.1

Any of the following persons may adopt:

- A resident
- A person with custody of a child placed by a child-placing agency
- An adopting parent of a child who was subject to a consent proceeding
- Intended parents who are parties to a surrogacy contract

- A husband and wife jointly
- A stepparent

A man and woman previously married to each other who stood *in loco parentis* to a child during their marriage to each other, who could have adopted the child while married to each other, but whose marriage is void, has been annulled, or has dissolved, may adopt the child pursuant to the provisions applicable to married persons.

- Who May Be Adopted

Citation: Ann. Code §§ 63.2-1200; 63.2-1243

The following persons may be adopted:

- A minor child
- A person age 18 or older under the following circumstances:
 - The adopted person is a stepchild to whom the petitioner has stood *in loco parentis* for a period of at least 3 months.
 - The adopted person is close relative.
 - The adopted person is the birth child of the petitioner or had resided in the home of the petitioner for a period of at least 3 months prior to reaching age 18.
 - For good cause shown, as long as the adopted person is at least 15 years younger than the petitioner, and the petitioner and the adopted person have known each other for at least 5 years prior to the filing of the petition for adoption.

- Who May Place a Child for Adoption

Citation: Ann. Code § 63.2-1200

A child may be placed for adoption by:

- A licensed child-placing agency
- A local board of social services
- The child's parent or legal guardian if the placement is a parental placement
- Any agency outside the Commonwealth that is licensed or otherwise duly authorized to place children for adoption by virtue of the laws under which it operates

Private v. Public Adoptions

A. Domestic: Public Agency Adoption

Public adoption agencies are run by the state county or city and are usually a part of the jurisdictions social services department.

1. Advantages include:
Lower cost, availability of a subsidy, public agencies often have extensive knowledge of government resources, birthparents are usually not involved in selecting an adoptive family for the child.
2. Challenges include:
A foster care placement may not lead to an adoption, placement may be at risk due to preferences, complexity of working with the government, health issues.

B. Domestic: Private Agency Adoption

Private agencies may be established by religious charities or social service organizations or are agencies with no affiliations (for profit or not-for-profit). The agency will have found the birth mother and will match her with the adoptive parents who are part of their waiting family program.

1. Advantages include: agency screens birthmother and provides a family with information on the birthparents' history and physical and mental health, agency will do the research and development needed for the adoption process, agency provides counseling to both the birth mother and the adoptive parents, some closed adoptions are possible.
2. Challenges include: When a birth mother chooses the adoptive family, she may be extremely selective, agency pre-screens the adoptive family, and may be extremely selective, lists of waiting families and potentially waiting times may be long, while waiting for final consent, the child may be placed with a foster family rather than the adoptive family,

C. Domestic: Independent Adoption

An agency is not involved with the placement of a child. The adoptive parents have direct contact with the birth mother, or through an intermediary, such as a physician. Some states prohibit independent adoption.

1. Advantages include: clients have more control over the adoption process, the birth mother and adoptive parents can get to know one another leading to peace of mind for the birth mother and realistic expectations of the child, the adoptive family will receive direct information about the birth mother and father (health, medical history, personality traits), the adoptive family will be able to pass on information (including the reasons for placing the child for adoption) from the

birth mother, twice as many birth mothers prefer independent adoption to agency adoption

2. Challenges include: Counseling services may not be included in the process, unless initiated by the adoptive family, expectations (such as the amount of contact) may change for either the adoptive family or the birth mother, clients must invest time and energy into networking, paperwork, research and legal issues.

The adoption laws in Maryland, Virginia and the District of Columbia provide that anyone can help prospective adoptive parents locate a birth mother as long as the party is not being paid. The obvious exception is licensed child-placing agencies. Agencies are authorized by the state to provide matching services. Private adoption offers prospective adoptive parents the wonderful opportunity to take positive, assertive steps in building their family. Rather than waiting by the telephone for the agency to call, private adoption affords searching adoptive parents a process by which they can reach out to birth parents in a direct and efficient manner. No one will be a better advocate for searching adoptive parents than the parents themselves.

Searching for birth parents is often broken down into two general processes – **advertising** and **networking**. The most common form of **advertising** is the running of ads in print newspapers. Such ads are routinely found in smaller size newspapers such as penny saver and gazette style papers. Adoption ads will contain a telephone number for the birth mother to contact the searching adoptive parents. It is common for such numbers to be toll free and to be call forwarded to a cell phone. Advertising need not be limited to general print newspapers. Magazines offer an innovative outlet. One creative searching family chose to place their successful ad in Soap Opera Digest. Another searching couple, of German heritage, placed their ad in a German-American newspaper. Today, through the Internet, one can easily identify thousands of print publications, each of which can provide a creative and effective outlet for getting the word out about an adoption search.

Networking can be broken down into two processes – **written** networking and **verbal** networking. The simplest form of written networking is to create a “Dear Friends” letter. Such a letter can be easily sent to family, friends, colleagues, etc. It is a way for searching adoptive parents to get the word out about their adoption plans. It also serves to help educate other about the private adoption process. An easy way to dive into the searching process is to send no less than 100 letters over a weekend. A good idea is to follow the “refrigerator rule” – ask those who are contacted to hang the letter on their refrigerator so that the search will always be out in the open and on everyone’s mind. Many searching adoptive parents will print small cards that can be either mailed or handed out.

Verbal **networking** requires searching adoptive parents to tell everyone they meet – literally everyone – that they are looking to adopt and are searching for birth parents who may want to make an adoption plan. A searching couple should agree between themselves that each will tell one new person every day about their adoption plan. Like **written** networking,

verbal networking requires those searching to create lists of people to be contacted so that the outreach is broad, and so that follow-up contact is not forgotten.

The **Internet** provides searching adoptive parents the opportunity to both advertise and network. It is not uncommon for searching adoptive parents to set up a website introducing themselves to birth parents. There are a number of professional sites that offer such a service. A website address can be included in both a print ad as well as a networking letter. Such a website allows birth parents to quickly obtain information about searching adoptive parents they may wish to contact. Searching parents may also use **e-mail** to efficiently get the word out about their adoption plan. Such an e-mail could easily link to a website created by the searching family. "Searching e-mails" often first describe private adoption and then focus on the goals of the searching parents.

Termination of Parental Rights

A. Choice of Law

How and when parental rights are terminated depends on (a) the type of adoption that is taking place and (b) the relevant state's laws.

1. In an independent or private adoption, the laws addressing parental rights will be the laws of the jurisdiction where the adoption petition is filed. This is most often the state where the adoptive parents reside. However, adoptive parents may choose to file their petition for adoption in the jurisdiction where the birth mother resides or the baby is born.

2. In an agency adoption, whether it be a public agency or a private agency, the parental rights of the birth parents will be addressed pursuant to the laws of the jurisdiction where the agency operates. The adoption may be "finalized" in the state where the adoptive parents reside, however, the substantive adoption law will be the law of the state where the agency maintains its office and where the agency operates.

B. District of Columbia

In a private or independent adoption, parental rights are terminated when the Court enters a final decree of adoption. In an agency adoption, by a D.C. agency, parental rights are terminated by statute.

C. Maryland

In a private or independent adoption, parental rights are terminated when the Circuit Court enters a final judgment of adoption. In an agency adoption, parental rights are terminated when the Circuit Court enters a Judgment of Guardianship.

D. Virginia

In a parental placement adoption, parental rights are terminated with the entry of the final decree of adoption. But, Virginia parental placement adoptions do utilize an interlocutory order pending finalization. In a Virginia agency adoption, parental rights are terminated by statute but some agencies do seek a termination order from a Juvenile and Domestic Relations District Court.

E. Addressing the parental rights of the birth father.

See attached article.

The Home Study

The home study process has three purposes:

- Educate and prepare the adoptive family for adoption
- Evaluate the fitness of the adoptive family
- Gather information about the prospective parents that will help a social worker connect the family with a child whose needs they can meet.

The home study will be done by a licensed child-placing agency in the state where the adoptive parents reside.

There are a few adoption scenarios where a pre-placement home study will not be required. – a private adoption in D.C. or Maryland where the child will not be crossing state lines.

A. Maryland

1. Method of Private Home Study Process - COMAR 07.02.12.10 .10

A. Home Study and Decision.

- (1) The home study enables the local department and the applicants to determine the ability of the applicants to meet the needs of an adopted child and the kind of child for whom the applicants are best suited.
- (2) Upon receipt of the completed application, the local department shall initiate a group or an individual home study with the applicants.

B. Interviews for the Group Home Study.

- (1) The group home study shall consist of at least seven interviews, including five group sessions and two individual family interviews.
- (2) At least one of the interviews shall be in the applicant's home.

(3) Married couples shall be seen separately for at least one interview to evaluate individual commitment and purpose in seeking a child through adoption.

C. Interviews for the Individual Home Study.

(1) The individual home study shall consist of a minimum of four interviews.

(2) Married couples shall be seen separately for at least one interview to evaluate individual commitment and purpose in seeking a child through adoption.

(3) Individual interviews shall be conducted for each family member as appropriate to the situation and the age of the family member.

D. Training.

(1) Regardless of the home study method used, all applicants shall complete the preservice training requirements as set forth in COMAR 07.02.25.07B.

(2) An information or orientation meeting may be counted toward the required 27 hours of preservice training.

(3) If a family is dually approved, the family shall attend subsequent in-service training as required by COMAR 07.02.25.07B.

E. Timelines for Completing the Home Study. The local department shall:

(1) Complete the home study within 90 calendar days, except when there are delays caused by crises, problems, or ambivalence in the family;

(2) Confirm any delays with the family in writing, indicating what effect the delays have on the completion of the home study; and

(3) Document the delays in the case record and ensure that the home study process does not extend beyond 120 days.

F. Criminal Background Investigation.

(1) Application.

(a) Before an adoptive home may be approved, an applicant and all household members 18 years old and older shall apply for a criminal background investigation in compliance with Family Law Article, §§5-560—5-568, Annotated Code of Maryland.

(b) After the home is approved, if other individuals who are 18 years old or older come to live with the family, they shall apply for a criminal background investigation within 30 days of moving into the household.

(c) Upon reapplication for adoption, an applicant shall obtain new criminal clearances as required in §F(1)(a)—(b) of this regulation, if the original clearances are 2 years old or older.

(2) Local Department Review.

- (a) The local director shall review charges, investigations, convictions, or findings related to any crime of any household member to determine the:
 - (i) Possible effect on the applicant's ability to execute the responsibilities of an adoptive parent; and
 - (ii) Ability of the local department to achieve its goal in providing service to ensure the safety and well-being of children in care.
- (b) Based on the review, the local director may deny, suspend, or revoke adoptive home approval.
- (c) The local department may not approve, or continue to approve as an adoptive home, any home in which an adult in the household has been convicted of:
 - (i) A crime, if the local department feels there is serious concern for a child's safety; or
 - (ii) Any crime enumerated in 42 U.S.C. §671(a)(20).

G. Child Protective Services Clearance.

- (1) Before an adoptive home may be approved:
 - (a) An applicant and all household members 18 years old and older shall consent to a child protective services clearance to determine if there is a prior indicated or unsubstantiated finding of abuse or neglect for any family or household member;
 - (b) If the review reveals a pending investigation, a decision may not be made as to the use of the home until the investigation is complete in accordance with COMAR 07.02.07.
- (2) The local department may not approve or continue to approve as an adoptive home any home in which an individual:
 - (a) Refuses to consent to the child protective services clearance; or
 - (b) Has an indicated child abuse or neglect finding.
- (3) An exception to §G(2) of this regulation may not be made unless the local director has given written approval.
- (4) The local director shall review unsubstantiated rulings related to any adult in the household to determine the possible risk to a child's safety. Based on the findings, the local director may deny, suspend, or revoke adoptive home approval.

H. Child Support Background Check. Before an adoptive home may be approved, the local department shall conduct a background check of child support arrearages on an applicant and consider any arrearage in determining approval or disapproval of the home.

I. Disapproval of Adoption. If the local department decides during the home study process or after adoption home approval that adoption is not an appropriate plan for the family, the caseworker shall complete the following steps:

- (1) Hold an individual family interview within 10 working days of making the decision to disapprove the home for adoption and advise the family of the:
 - (a) Reasons for the decision,
 - (b) Family's right to appeal the decision, and
 - (c) Procedures for the appeal process;
- (2) Send a letter to the family within 10 working days of the interview that provides written confirmation of the:
 - (a) Decision to disapprove the home, and
 - (b) Information in §I(1) of this regulation; and
- (3) Complete, within 5 working days of sending the letter, documentation for the record that summarizes the:
 - (a) Completed portion of the home study, and
 - (b) Reasons for termination of the family.

J. Designation of Responsible Adult.

- (1) During the adoptive home study process, local department staff shall advise the prospective adoptive parents of the need to identify an adult qualified to assume responsibility for the care and custody of the child in case of the deaths or incapacitation of the prospective adoptive parents.
- (2) After the child is placed, but before finalization, the caseworker shall again discuss with the adoptive parents the importance of:
 - (a) Identifying a responsible adult to care for the child in case of their death or incapacitation; and
 - (b) Executing a legal document that confirms this identification.

K. Home Studies for Nonpublic Agency Adoptions. Unless prior approval is granted by the Administration, the local department may not engage in home study activities or charge a fee for these activities to a family adopting children:

- (1) From another country;
- (2) Through a private licensed child placing agency; or
- (3) Independently.

2. *Method of Foster Parent Home Study. COMAR 07.05.02.11 .11*

A. Before certifying the foster parent, the agency child placement worker shall conduct a home study that includes:

- (1) At least two home visits;
- (2) At least 20 hours of training for a foster parent applicant individually, or in a group of other applicants which:
 - (a) May be co-led by the agency child placement worker with other appropriate agency employees, and
 - (b) Shall include all topics described in Regulation .12 of this chapter; and

- (3) The child placement worker's evaluation of the prospective foster parent which:
- (a) Utilizes information in the application, training records, and interviews to assess the applicant's weaknesses and strengths, and
 - (b) Makes a professional judgement regarding the applicant's ability to provide a safe, healthy, nurturing environment for a foster child.

B. The agency child placement worker shall ensure and document in the application record that all required training material is provided to the applicant.

C. The application and home study used for foster parent certification, if properly updated through the annual foster parent certification renewal, may be used in place of an adoption home study.

D. The applicant shall:

- (1) Sign a foster parent consent form;
- (2) Meet the requirement for 20 hours of training; and
- (3) Meet all agency requirements for certification as a foster parent.

E. During the home study, the agency child placement worker shall:

- (1) Discuss the agency's policies on discipline and child abuse or neglect, including the:
 - (a) Possibility of physical or sexual victimization by an older child; and
 - (b) Responsibility of the foster parent for the safety of the child;
- (2) Obtain and document verification of the applicant's employment and income;
- (3) Obtain and document existence of the applicant's marriage and divorce certificates, if appropriate;
- (4) Request a health safety inspection of the applicant's home by the health department or a State-licensed sanitarian;
- (5) Request a fire safety inspection for the applicant's home;
- (6) Obtain all required medical documentation from prospective foster household members;
- (7) For all adults living in the applicant's home, obtain:
 - (a) State and federal criminal background checks; and
 - (b) Appropriate local department child abuse and neglect clearances;
- (8) Obtain local department clearances for the applicant's child support records;
- (9) If the applicant has a vehicle operator's license, obtain a copy of the applicant's driving record from the Motor Vehicle Administration;
- (10) Obtain at least three individual references, one of which:
 - (a) May be a relative; and

(b) When a child in the household attends a school, shall be a school administrator, counselor, or teacher employed by the school attended by the child;

(11) Support the individual written references with at least:

(a) One documented face-to-face interview; and

(b) Telephone interviews with two references not interviewed face-to-face.

(12) Conduct at least two home visits with applicants in accordance with the following schedule:

(a) The first home visit shall include an inspection of the house and interviews with all members of the household; and

(b) The second home visit may include only the applicant and shall result in an agreement between the agency and the applicant about:

(i) Pursuing certification,

(ii) Discussing the final recommendation, and

(iii) Problem areas;

(13) Explore the following areas with the applicant:

(a) Motivation to provide foster care or adopt;

(b) Applicant's background, including:

(i) Childhood experiences and relationships,

(ii) Education,

(iii) Life-changing experiences,

(iv) Relationships with relatives and friends,

(v) Marital relationships,

(vi) In-law relationships,

(vii) Sibling relationships,

(viii) Relationships with the applicant's children, if any,

(ix) Former marriages, if any, and

(x) Child-support obligations, if any;

(c) Applicant's ability to cope with change and stress;

(d) When applicable, impact of infertility;

(e) Special interests and activities;

(f) Impact of applicant's religion or life philosophy on the care of children;

(g) Employment and financial circumstances;

(h) Knowledge of and experience in parenting;

(i) Attitudes toward children's discipline;

(j) Attitudes toward foster care and adoption, including:

(i) Expectations of a child,

(ii) Dealing with a child regarding foster care and adoption,

(iii) Possibility of an adoptee's need to search for the birth parents in the future,

(iv) Dealing with birth parents of either an adoptee or foster child,

(v) Impact of the law on opening records for purposes of search and reunification, and

- (vi) Type of child the applicant could consider parenting, including a child's age range, special needs, and medical requirements;
- (k) Home and community, including:
 - (i) Physical environment of the home,
 - (ii) Child care plans if needed, and
 - (iii) Attitudes of relatives, friends, and neighbors toward foster care and adoption, and
- (l) Safety of the home environment based on a written instrument developed by the agency.

B. District of Columbia

1. § 16-307. Investigation, report, and recommendation.

(a) Except as provided by section 16-308, upon the filing of a petition the court shall refer the petition for investigation, report, and recommendation to:

- (1) the licensed child-placing agency by which the case is supervised; or
- (2) the Mayor, if the case is not supervised by a licensed child-placing agency.

(b) The investigation, report, and recommendation shall include:

- (1) an investigation of:
 - (A) the truth of the allegations of the petition;
 - (B) the environment, antecedents, and assets, if any, of the prospective adoptee, to determine whether he is a proper subject for adoption;
 - (C) the home of the petitioner, to determine whether the home is a suitable one for the prospective adoptee; and
 - (D) any other circumstances and conditions that may have a bearing on the proposed adoption and of which the court should have knowledge, including the existence and terms of a tentative adoption subsidy agreement entered into prior to the filing of the adoption petition under section 3 of the Act of July 26, 1892 (§ 4-301).

(2) a written report to the court of the findings of the investigation; and

(3) a recommendation to the court whether a final decree declaring the adoption prayed for in the petition should be immediately granted, or whether the court should grant an interlocutory decree granting temporary custody of the prospective adoptee to the petitioner, as hereinafter set forth.

(c) The written report submitted to the court shall be filed with, and become part of, the records in the case.

(Dec. 23, 1963, 77 Stat. 539, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 555, Pub. L. 91-358, title I, § 145(a)(2); 1973 Ed., § 16-307; Jan. 2, 1974, 87 Stat. 1061, Pub. L. 93-241, § 2(a); 1981 Ed., § 16-307; Apr. 30, 1988, D.C. Law 7-104, § 4(d), 35 DCR 147.)

2. **§ 16-308.** Investigations when prospective adoptee is adult or petitioner is spouse or domestic partner of natural parent.

(a) The court may dispense with the investigation, report, and interlocutory decree provided for by this chapter when:

(1) The prospective adoptee is an adult; or

(2) The petitioner is a spouse or domestic partner of the natural parent of the prospective adoptee and the natural parents consents to the adoption or joins in the petition for adoption.

(b) In the circumstances specified in subsection (a)(2) of this section, the petition need not contain the information concerning race and religion as specified in § 16-305(4) and (5).

(c) For the purposes of this section, the term "domestic partner" shall have the same meaning as provided in § 32-701(3), but shall exclude a domestic partner who is the parent, grandparent, sibling, child, grandchild, niece, nephew, aunt, or uncle of the natural parent.

(d) Nothing in this section shall be construed to waive the requirements of §§ 4-1305.01 through 4-1305.09, including the requirement of a fingerprint-based criminal records check.

(Dec. 23, 1963, 77 Stat. 539, Pub. L. 88-241, § 1; 1973 Ed., § 16-308; Oct. 30, 1975, D.C. Law 1-25, § 3, 22 DCR 2465; 1981 Ed., § 16-308; July 18, 2009, D.C. Law 18-33, § 3(a), 56 DCR 4269; Sept. 11, 2009, D.C. Law 18-47, § 3, 56 DCR 4960.)

Implications of ICPC

Interstate Compact on the Placement of Children (ICPC): An interstate compact, or agreement, that has been enacted into law by all 50 states in the United States, and the District of Columbia, which controls the lawful movement of children from one state to another for the purposes of adoption. Both the originating state, where the child is born, and the receiving state, where the adoptive parents live and where the adoption of the child will take place, must approve the child's movement in writing before the child can legally leave the originating state. This Compact regulates the interstate movement of both foster children and adoptive children.

Each of these jurisdictions has incorporated the ICPC into its own laws. In adoption cases, the Compact provides that ICPC approval must be obtained in every case where a child crosses state lines for the purpose of adoption. Each state has an individual designated as its ICPC Administrator. That position is usually found within each state's department of social services. For example, in Virginia, the ICPC Administrator is a part of the Virginia Department of Social Services in Richmond.

The ICPC applies to all types of adoption, whether private or agency. Compliance with the Compact is mandatory. In a few states, a failure to comply with the ICPC is a criminal offense. In every adoption, an intentional failure to comply with the Compact may impact on the ability of the adoptive parents to finalize their adoption. The purpose of the ICPC is to protect the interests of children placed for adoption across state lines. It is important to remember that proceedings under the ICPC are completely separate from the actual adoption proceedings that are filed by adoptive parents in court in their home state.

In an adoption, whether a parental placement or agency placement, the state where the birth mother resides and where the child is born is deemed to be the "sending" state. The state where the adoptive parents live, and the state where the child is going to, is considered the "receiving" state. After the birth of the child, ICPC approval must be obtained from the ICPC Administrator in both the sending and receiving states. Although specific practices vary with each different state, ICPC approval is almost always obtained after the child is born.

For example, if adoptive parents in Virginia have made an adoption plan with birth parents in Maryland, ICPC approval must be obtained before the child can return to Virginia. In such a case, following the birth of the child, the birth parents would place the child with the Virginia adoptive parents and a submission would be made to the Maryland ICPC Administrator in Baltimore. The initial ICPC submission is usually made by the attorney representing the birth parents. Much of the information, such as a social and medical history on the birth parents and a home study on the adoptive parents, can be gathered well prior to the birth of the child. Approval under the ICPC can be obtained quickly and efficiently by

ensuring that matters which can be handled in advance are dealt with prior to the birth of the child.

If the placement is to be made through a licensed child-placing agency in the sending state, then it will be the agency, not the birth parents, who will actually be "sending" the child. The ICPC Administrator in the sending state will review the submission, endorse it, and forward the package to the administrator in the receiving state. Once the receiving state approves the placement, the adoptive parents receive permission to bring their son or daughter home.

The ICPC should not be viewed as a hurdle or test that adoptive parents must overcome when their child is born in another state. The Compact's intentions are to provide a basic safeguard for children and a mechanism to monitor the movement of children as they travel from state to state. An experienced adoption attorney can ensure that ICPC approval is obtained quickly after the placement of a child for adoption, and that adoptive parents can return home with their family with little or no delay.

- A. Maryland – Annotated Code of Maryland, Family Law §5-601 et. seq.
- B. District of Columbia - D.C. Code Sec. 32.1041 et. seq.
- C. Virginia – Va. Code Section 63.2-1000

Filing the Petition for Adoption

A. Maryland

Venue - File in the county where the adoptive parents or birth parents resided for the previous 90 days. MD Code Courts and Judicial Proceedings Section 6-203.

Petition contents – Maryland Rule

(a) Titling of case.- A proceeding shall be titled "In re Adoption/Guardianship of _____ (first name and first initial of last name of prospective adoptee or ward)."

(b) Petition for adoption.-

(1) Contents.- A petition for adoption shall be signed and verified by each petitioner and shall contain the following information:

- (A) The name, address, age, business or employment, and employer of each petitioner;
- (B) The name, sex, and date and place of birth of the person to be adopted;
- (C) The name, address, and age of each parent of the person to be adopted;
- (D) Any relationship of the person to be adopted to each petitioner;
- (E) The name, address, and age of each child of each petitioner;

(F) A statement of how the person to be adopted was located (including names and addresses of all intermediaries or surrogates), attaching a copy of all advertisements used to locate the person, and a copy of any surrogacy contract;

(G) If the person to be adopted is a minor, the names and addresses of all persons who have had legal or physical care, custody, or control of the minor since the minor's birth and the period of time during which each of those persons has had care, custody, or control, but it is not necessary to identify the names and addresses of foster parents, other than a petitioner, who have taken care of the minor only while the minor has been committed to the custody of a child placement agency;

(H) If the person to be adopted is a minor who has been transported from another state to this State for purposes of placement for adoption, a statement of whether there has been compliance with the Interstate Compact on the Placement of Children (ICPC);

(I) If applicable, the reason why the spouse of the petitioner is not joining in the petition;

(J) If there is a guardian with the right to consent to adoption for the person to be adopted, the name and address of the guardian and a reference to the proceeding in which the guardian was appointed;

(K) Facts known to each petitioner that may indicate that a party has a disability that makes the party incapable of consenting or participating effectively in the proceedings, or, if no such facts are known to the petitioner, a statement to that effect;

(L) Facts known to each petitioner that may entitle the person to be adopted or a parent of that person to the appointment of an attorney by the court;

(M) If a petitioner desires to change the name of the person to be adopted, the name that is desired;

(N) As to each petitioner, a statement whether the petitioner has ever been convicted of a crime other than a minor traffic violation and, if so, the offense and the date and place of the conviction;

(O) That the petitioner is not aware that any required consent has been revoked; and

(P) If placement pending final action on the petition is sought in accordance with Code, Family Law Article, § 5-3B-12, a request that the court approve the proposed placement.

(2) Exhibits.-

(A) The following documents shall accompany the petition as exhibits:

(i) A certified copy of the birth certificate or "proof of live birth" of the person to be adopted;

(ii) A certified copy of the marriage certificate of each married petitioner;

(iii) A certified copy of all judgments of divorce of each petitioner;

(iv) A certified copy of any death certificate of a person whose consent would be required if that person were living;

(v) A certified copy of all orders concerning temporary custody or guardianship of the person to be adopted;

(vi) A copy of any existing adoption home study by a licensed child placement agency concerning a petitioner, criminal background reports, or child abuse clearances;

(vii) A document evidencing the annual income of each petitioner;

(viii) The original of all consents to the adoption, any required affidavits of translators or attorneys, and, if available, a copy of any written statement by the consenting person indicating a desire to revoke the consent, whether or not that statement constitutes a valid revocation;

(ix) If applicable, proof of guardianship or relinquishment of parental rights granted by an administrative, executive, or judicial body of a state or other jurisdiction; a certification that the guardianship or relinquishment was granted in compliance with the jurisdiction's laws; and any appropriate translation of documents required to allow the child to enter the United States;

(x) If a parent of the person to be adopted cannot be identified or located, an affidavit of each petitioner and the other parent describing the attempts to identify and locate the unknown or missing parent;

(xi) A copy of any agreement between a parent of the person to be adopted and a petitioner relating to the proposed adoption with any required redaction;

(xii) If the adoption is subject to the Interstate Compact on the Placement of Children, the appropriate ICPC approval forms;

(xiii) A brief statement of the health of each petitioner signed by a physician or other health care provider if applicable; and

(xiv) If required, a notice of filing as prescribed by Code, Family Law Article:

(1) § 5-313 in a Public Agency Guardianship;

(2) § 5-331 in a Public Agency Adoption without Prior TPR; or

(3) § 5-345 in a Public Agency Adoption after TPR.

(B) The following documents shall be filed before a judgment of adoption is entered:

(i) Any post-placement report relating to the adoption, if applicable;

(ii) A brief statement of the health of the child by a physician or other health care provider;

(iii) If required by law, an accounting of all payments and disbursements of any money or item of value made by or on behalf of each petitioner in connection with the adoption;

(iv) An affidavit of counsel for a parent, if required by Code, Family Law Article:

(1) §§ 5-307 and 5-321 in a Public Agency Guardianship;

(2) §§ 5-307 and 5-339 in a Public Agency Adoption without Prior TPR;

(3) §§ 5-3A-07 and 5-3A-19 in a Private Agency Guardianship; or

(4) §§ 5-3B-06 and 5-3B-21 in an Independent Adoption.

(v) An affidavit of counsel for a child, if the child is represented;

(vi) If the adoption is subject to the Interstate Compact on the Placement of Children, the required post-placement form;

(vii) A proposed judgment of adoption; and

(viii) A Department of Health and Mental Hygiene Certificate of Adoption Form.

(c) Petition for guardianship.- A petition for guardianship shall state all facts required by subsection (b) (1) of this Rule, to the extent that the requirements are applicable and known to the petitioner. It shall be accompanied by all documents required to be filed as exhibits by subsection (b)(2) of this Rule, to the extent the documents are applicable. The petition shall also state the license number of the child placement agency.

(d) If facts unknown or documents unavailable.- If a fact required by subsection (b) (1) or section (c) of this Rule is unknown to a petitioner or if a document required by subsection (b)

(2) or section (c) is unavailable, the petitioner shall so state and give the reason in the petition or in a subsequent affidavit. If a document required to be submitted with the petition becomes available after the petition is filed, the petitioner shall file it as soon as it becomes available.

(e) Disclosure of facts known to child placement agency.- If any fact required by subsection (b) (1) of this Rule to be stated is known to a child placement agency and the agency declines to disclose it to a petitioner, the agency shall disclose the fact to the court in writing at the time the petition is filed.

B. District of Columbia

Court has jurisdiction under the provision of D.C. Code § 16-301, et. seq

C. Virginia

In Virginia, there are two different courts which are involved in the adoption process. The Juvenile and Domestic Relations District Court is the court which oversees the part of the process during which a birth parent signs the consent to adoption. Unless an exception applies, the birth parent must appear in court and sign the consent in front of a judge. After that judge witnesses the signing of the consent he or she will issue an order awarding legal custody of the child to the adoptive parent or parents. The Circuit Court is the court which signs the final order granting the adoption. No hearing in the Circuit Court is usually required.

Virginia - § 63.2-1201. Filing of petition for adoption; venue; jurisdiction; and proceedings. Proceedings for the adoption of a minor child and for a change of name of such child shall be instituted only by petition to a circuit court in the county or city in which the petitioner resides, in the county or city in which the child-placing agency that placed the child is located, or in the county or city in which a birth parent executed a consent pursuant to

§ 63.2-1233. Such petition may be filed by any natural person who resides in the Commonwealth, or who has custody of a child placed by a child-placing agency of the Commonwealth, or by an adopting parent of a child who was subject to a consent proceeding held pursuant to § 63.2-1233, or by intended parents who are parties to a surrogacy contract. The petition shall ask leave to adopt a minor child not legally the petitioner's by birth and, if it is so desired by the petitioner, also to change the name of such child. In the case of married persons, the petition shall be the joint petition of the husband and wife but, in the event the child to be adopted is legally the child by birth or adoption of one of the petitioners, such petitioner shall unite in the petition for the purpose of

indicating consent to the prayer thereof only. If any procedural provision of this chapter applies to only one adoptive parent, then the court may waive the application of the procedural provision as to the spouse of the adoptive parent. The petition shall contain a full disclosure of the circumstances under which the child came to live, and is living, in the home of the petitioner. Each petition for adoption shall be signed by the petitioner as well as by counsel of record, if any. In any case in which the petition seeks the entry of an adoption order without referral for investigation, the petition shall be under oath.

A single petition for adoption under the provisions of this section shall be sufficient for the concurrent adoption by the same petitioners of two or more children who have the same birth parent or parents, and nothing in this section shall be construed as having heretofore required a separate petition for each of such children.

Working with Birth Parents

- A. Duty to the specific client and not to the outcome of the adoption.
- B. Advising client about options and ensuring consent is voluntary.
- C. Payment of the birth parent's legal fees. - In D.C., Maryland and Virginia, adoptive parents may pay for a birth parent's legal fees. In most cases, a retainer is provided by the adoptive parents.
- D. Explaining and offering adoption counseling.
- E. Confidentiality issues – what can be disclosed when it is material to the adoption.
- F. Representing both birth parents and the potential of a conflict of interest. Retainer agreement for birth parents.
- G. Advocating for birth parents in post adoption contact.
- H. What happens when the birth parent changes his or her mind?

State and Local Services

A public child-placing agency will be either a state, county or city department of social services. These governmental entities have the authority to place children for adoption who have been entrusted in their legal care. Often times, these are children who have been placed in foster-

care. Should it be necessary for the public agency to terminate the parental rights of the birth parents, such children will become eligible for adoption. Public agencies will follow the law of the state within which they operate. Many adoptive parents who pursue public agency adoption will first become licensed foster parents. Once the parental rights of the birth parents have been terminated, and the requisite post-placement supervision has occurred, the public agency will issue its consent to the adoptive parents. The adoptive parents will then file a petition for adoption, usually in the state where they reside. In many cases, adoptive parents who have adopted through a public agency may be eligible for an adoption subsidy allowance. A public agency adoption should never be finalized until a written adoption subsidy agreement is in place.

Medical care and Insurance coverage

There are both federal and state-level regulations affecting the eligibility of adoptive children for health insurance. Employer-sponsored plans are subject to federal regulation, with an additional overlay of state regulation for insured plans. Individual plans, by contrast, are regulated *only* at the state level.

Protections Under Federal Law

Federal law requires that group health plans that provide coverage for "natural" children must provide the same coverage for adoptive children, *to begin when children are placed for adoption*. The specific law in question is Section 609(c) of the Employee Retirement Income Security Act of 1974 (ERISA).

COBRA and HIPAA

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) requires most employer-sponsored group health plans to offer continuation of health care coverage under certain circumstances. However, COBRA did not (in its original form) require employers to provide coverage for children born or adopted after a parent moved to COBRA.

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) added additional protections for adopted children. First, HIPAA's portability requirements (which apply to both large and small group plans) state that insurers may not impose a waiting period or preexisting condition exclusion on a child under 18 who is adopted or placed for adoption and who is enrolled in a health benefit plan within 30 days of the date of adoption or placement for adoption. This provision applies equally to domestic and foreign adoptions. HIPAA also clarified that after-born and after-adopted children are qualified beneficiaries under COBRA.

Individual Plans

These plans are regulated at the state level, rather than the federal level. State legislation is all over the board. In most states, the easiest way to find out the applicable law will be to call the State Insurance Department's Consumer Help Line.

Medicaid

The Adoption and Safe Families Act of 1997 is federal legislation that is intended to help foster children find placement in permanent homes by providing financial assistance to their families. It dovetails with similar legislation at the state level. Among other provisions, the federal act "extends Medicaid or state funded health insurance to children with non federal (state funded) adoption subsidy agreements, if the children are determined to have 'special needs for medical or rehabilitative care' ... Under the Title IV-E adoption assistance program, Medicaid coverage transfers with the child to any new state of residence."

Expansion of Adoption Credit, Adoption Assistance Programs

For 2010, the maximum adoption credit is increased to \$13,170 per eligible child (a \$1,000 increase). This increase applies to both non-special needs adoptions and special needs adoptions. Also, the adoption credit is made refundable. The new dollar limit and phase-out of the adoption credit are adjusted for inflation in tax years beginning after Dec. 31, 2010. Also, the scheduled sunset of Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) provisions relating to the adoption credit is delayed for one year (i.e., the sunset becomes effective for tax years beginning after Dec. 31, 2011).

For adoption assistance programs, the maximum exclusion is increased to \$13,170 per eligible child (a \$1,000 increase). The new dollar limit and income limitations of the employer-provided adoption assistance exclusion are adjusted for inflation in tax years beginning after Dec. 31, 2010. The EGTRRA sunset of provisions relating to adoption assistance programs is also delayed for one year (i.e., the sunset becomes effective for tax years beginning after Dec. 31, 2011).

Role of the Guardian Ad Litem

- A. Understand the difference between a GAL and an attorney appointed by the court to represent a party in an adoption.
- B. D.C. Code Section 16-316 states that the court may appoint an attorney for a birth parent whose consent has not been obtained and if the birth parent cannot afford an attorney. The statute also provides that the court may appoint a Gal to represent a child in an adoption proceeding.

- C. In Maryland, a birth parent , who is under the age of 18 or has a disability, must have a court-appointed attorney, for his or her consent to be valid. An adoptee 10 or older must consent to his or her adoption, and some counties (Montgomery, Anne Arundel and Prince Georges) will require that an attorney be appointed to represent the adoptee.
- D. In Virginia, a child who is the subject of a parental-placement adoption will have a GAL appointed by the Juvenile and Domestic Relations District Court.

Adoption of a Special Needs Child

North American Council on Adoptable Children (NACAC)

970 Raymond Avenue, Suite 106

St. Paul, MN 55114

phone: 651-644-3036

fax: 651-644-9848

e-mail: info@nacac.org

Adoption Subsidy Definitions

In foster care and adoption in the U.S., many abbreviations, acronyms, and special phrases are used. Below is a brief list of common subsidy-related terms and their definitions.

Adoption Assistance

Adoption assistance or subsidy is provided for children with special needs as an incentive to help get children adopted. A subsidy agreement should be negotiated prior to the finalization of an adoption, and may include monthly maintenance payments, medical coverage, and other services such as therapy and respite care, as outlined in state and county policy.

Title IV-E

The federally funded adoption assistance program that provides financial support to adoptive parents of children with special needs. A portion of the support is federally funded, and the remaining portion may be all state dollars or a mix of state and county dollars. Title IV-E children are either AFDC- or SSI-eligible prior to adoption.

Non-IV-E

State funded children are often referred to as non-Title IV-E children. These special needs

children are funded by state and/or county dollars, and are neither AFDC- nor SSI-eligible prior to adoption.

AFDC

Aid to Families with Dependent Children. This program no longer exists at the federal level as it was replaced with TANF—temporary aid to needy families. However, the rules for AFDC as of June 1996 are used to qualify a child for the Title IV-E Adoption Assistance Program. Specifically, a child whose biological family is of low income (e.g., receiving food stamps or some other type of welfare) and who is deprived of parental support (i.e., only one biological parent was in the home when the child was removed from the home) can be considered eligible for AFDC.

SSI

Supplemental Security Income. Children eligible for SSI are significantly disabled. Common diagnoses that qualify a child for SSI include Down’s Syndrome, deafness and blindness, and cerebral palsy.

Non-recurring

Non-recurring adoption expenses are one-time expenses directly related to the finalization of a child with special needs. Typical expenses that are paid or reimbursed to the family include the home study fees, attorney fees, replacement of the birth certificate, and travel to and from the child, including mileage, lodging and meal

Means Testing

This refers to using a family’s income to determine eligibility for a subsidy. While this is not common among states, it does happen occasionally. Means testing eligibility is different from means testing the level of the subsidy. While it is permissible to look at the child’s condition along side the family’s resources to set the monthly rate of the subsidy, it is not appropriate to disqualify a child for eligibility based on family income.

Federal policy guidance states that means testing eligibility for Title IV-E is not allowed. However, state funded (non-IV-E Programs) can be means tested. In addition, Supplemental Security Income (SSI) is means tested.

Title XX

Title XX Social Services are a flexible block grant of monies from the federal government to state governments. Some states pass the money directly from the federal level to the county level. Few states provide direct services to adoptive families using these monies, as was once the common practice. If a state does provide a service such as day care or respite care, families can apply for these services just like any other family.

Specialized Rates

Specialized maintenance rates are based on the extraordinary needs of the child, and/or the additional parenting skills required to raise the child. These rates are provided at state option. Other terms used by states include level of care (LOC) increments, difficulty of care rates (DOC), and exceptional rates.

Fair Hearings

An administrative hearing can be requested by parents if they believe they have been treated unfairly by the agency or in an untimely manner. Often, parents take the agency to hearing because the agency reduced the foster care or adoption subsidy rate without due notice or if the parents finalized an adoption of a special needs child without subsidy and believe the child is (and was) eligible.

EPSDT

Early and Periodic Screening, Diagnostic and Treatment Services is a program intended to maintain and enhance the health and development of Medicaid eligible children and adolescents. Basic benefits under EPSDT are screening (e.g., medical history, physical exams, tests) vision, dental and hearing services, and other necessary health care. Title IV-E children are automatically eligible for these services, and non-IV-E adoptees may be Medicaid eligible if the state providing the subsidy elected to cover them in accord with program options in the law. The importance of EPSDT is that if a doctor finds in a screening or test that a child has a specific condition, Medicaid must provide treatment of that condition.

Subsidized Guardianship

Private guardianship involves the transfer of legal responsibility for a state ward from public custody to a private caregiver who becomes the legal guardian of the child. Unlike adoption, guardianship does not require surrender or termination of parental rights. Subsidized guardianship allows the caregiver to receive a monthly payment on behalf of the child, similar to the adoption assistance payments.