



**STATE STATUTES**  
CURRENT THROUGH JULY 2020

# Use of Advertising and Facilitators in Adoptive Placements

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In private or independent adoptions (without agency involvement), parents may choose to advertise their interest in adopting, while others may choose to utilize the services of adoption facilitators or intermediaries. Birth parents also may advertise their interest in placing their children for adoption. In an effort to protect the interests of all parties, especially children, and to avoid the possibility of an illegal placement, many States have enacted laws that either prohibit or regulate the use of advertising or facilitators for private adoptive placements.

## WHAT'S INSIDE

Use of advertising

Use of facilitators or intermediaries

## USE OF ADVERTISING

Advertising is defined as the publication in any public medium, either print or electronic, of an interest in adopting a child or if a specific child is available for adoption. Public media include newspapers, periodicals, radio, television, telephone book listings, the internet, billboards, or print fliers. Approximately 33 States currently have laws that in some way limit or regulate the use of advertising in adoptive placement.<sup>1</sup>

## PERSONS AND ENTITIES ALLOWED TO ADVERTISE

Most States allow public child welfare agencies to use advertising as a tool for finding suitable adoptive homes for children. In 24 States, licensed child-placing agencies are permitted to advertise the adoption-related services that they provide.<sup>2</sup> In Kansas and New Mexico, an agency that has not been licensed by the State may advertise as long as the advertisement clearly indicates that the agency is not licensed.

Other States limit the use of advertising to the following persons or entities:

- Attorneys who wish to advertise their availability to provide adoption-related legal services<sup>3</sup>
- Birth parents who wish to place their child for adoption<sup>4</sup>
- Prospective adoptive parents<sup>5</sup>

- Prospective adoptive parents who have approved preplacement assessments<sup>6</sup>

Other entities that may advertise include physicians (in Mississippi), crisis pregnancy centers (in Louisiana), and State adoption exchanges or resource centers (in Colorado and Wisconsin).

Connecticut specifically allows advertising by birth parents and prospective adoptive parents only. Georgia allows the use of public advertising by agencies only. Individuals, including birth parents and prospective adoptive parents, may exchange information by private means only, such as letters or telephone calls.

## PERSONS AND ENTITIES PROHIBITED FROM ADVERTISING

In five States<sup>7</sup>, no person is permitted to advertise for any of the following purposes:

- To find a child to adopt or to otherwise take permanent physical custody of a child (sometimes referred to as "rehoming")
- To find an adoptive home or any other permanent physical placement for a child or to arrange for or assist in the adoption, adoptive placement, or any other permanent physical placement of a child
- To offer to place a child for adoption or in any other permanent physical placement with another person

<sup>1</sup> The word "approximately" is used to stress the fact that States frequently amend their laws. This information is current through July 2020. The 33 States include Alabama, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, and Wisconsin.

<sup>2</sup> California, Colorado, Delaware, Florida, Georgia, Illinois, Indiana, Kansas, Louisiana, Maine, Massachusetts, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, Tennessee, Texas, and Washington

<sup>3</sup> In 16 States: Colorado, Florida, Idaho, Illinois, Indiana, Maine, Mississippi, Montana, New Hampshire, New Mexico, Oklahoma, Oregon, South Carolina, Tennessee, Washington, and Wisconsin

<sup>4</sup> In Illinois and Nebraska

<sup>5</sup> In Illinois, Kansas, New Hampshire, and Tennessee

<sup>6</sup> In 10 States: Colorado, Georgia, New Hampshire, New Mexico, North Carolina, Oklahoma, Oregon, South Carolina, Washington, and Wisconsin. For more information about preplacement assessments, see Child Welfare Information Gateway's [The Adoption Home Study Process](#).

<sup>7</sup> Colorado, Maine, Nevada, New Hampshire, and Wisconsin. For more information about this issue, see Information Gateway's [Unregulated Custody Transfers of Adopted Children](#).

Two States (Alabama and Kentucky) prohibit the use of any type of advertising related to adoption by any person or entity. Another 11 States prohibit advertising by any person or entity other than the State social services department or a licensed agency.<sup>8</sup> Utah specifically prohibits advertising by attorneys, physicians, or other persons who are not licensed to provide adoption-related services, unless that fact is clearly stated in the advertisement. In Virginia, no person or agency may advertise to perform any adoption-related activity that is prohibited by State law. For example, physicians, attorneys, and members of clergy are neither allowed to charge a fee for recommending an adoptive placement nor advertise that they are available to make such recommendations.<sup>9</sup> North Dakota law specifically prohibits advertising by hospitals providing maternity care or by maternity homes.

## **USE OF FACILITATORS OR INTERMEDIARIES**

In an independent or private placement adoption, a person or organization will often act as an intermediary or facilitator to match or bring together prospective adoptive parent/parents with a birth mother/birth parents wishing to pursue adoption for their child. An intermediary or adoption facilitator is any person or entity that is not an approved or licensed agency that acts on behalf of any birth parent or prospective adoptive parent in connection with the adoption of a child. In

an effort to ensure that no intermediary or member of the birth family profits from the placement of a child, approximately 43 States, the District of Columbia, and American Samoa have laws that regulate or affect the use of intermediaries or facilitators.<sup>10</sup>

## **STATES THAT PROHIBIT THE USE OF FACILITATORS**

Three States (Delaware, Kansas, and Maine) strictly prohibit any use of facilitators or intermediaries. Nine States prohibit their use by restricting the placement of children in adoptive homes to licensed agencies only.<sup>11</sup> Nebraska limits placement to either an agency or a member of the child's birth family. Minnesota and Nevada restrict placement of a child to a parent, legal guardian, or agency. The District of Columbia and New York limit placement to an agency, parent, legal guardian, or birth relative. Arizona, Iowa, and Ohio restrict the placement to an agency or an attorney. New Mexico and Oklahoma limit placement to an agency, family member, or attorney. West Virginia prohibits any person from offering or receiving any compensation for locating a child for any purpose that entails a transfer of the legal or physical custody of the child, regardless of whether the transfer is for adoption or other permanent placement.

<sup>8</sup> California, Delaware, Georgia, Idaho, Massachusetts, Montana, Nevada, New Hampshire, North Dakota, Ohio, and Texas

<sup>9</sup> Virginia law prohibits payment for making an adoptive placement except as compensation for specific services such as agency fees, medical or legal expenses, or other reasonable expenses connected with the adoption process.

<sup>10</sup> Alabama, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, and Wisconsin

<sup>11</sup> Connecticut, Georgia, Illinois, Massachusetts, Montana, New Mexico, North Dakota, Oregon, and Wisconsin

## STATES THAT REGULATE THE ACTIVITIES OF FACILITATORS

Fourteen States and American Samoa regulate the activities of intermediaries by limiting the compensation that they are allowed to receive.<sup>12</sup> It is illegal for these persons or agencies to receive any payment for the placement of the child in an adoptive home; reimbursement for actual medical or legal services is the only payment that they are allowed to receive. Nine States allow the use of adoption facilitators, but detail in statute the activities they are permitted to perform or the services they are required to offer.<sup>13</sup> These requirements may include the following:

- Providing written information about the adoption process to all parties (California, Florida, Michigan, and Washington)
- Providing to the adopting parent any available background information about the child's birth parent (California, Michigan, and Pennsylvania)
- Making sure that the adopting parents have completed home studies that have been approved (New Jersey and Pennsylvania)
- Reporting to the court all fees and expenses paid (California and Pennsylvania)
- Providing to the adopting parent information about the background of the child, to the extent available (Florida and Pennsylvania)

In Florida, where adoption facilitators frequently are attorneys, the law requires facilitators to obtain all necessary consents, file petitions and affidavits, and serve notices of hearings. In North Carolina and Vermont, the law explicitly states that a parent or guardian must personally select a prospective adoptive parent; the role of a facilitator is limited to either assisting the birth parent in evaluating that choice or assisting a prospective adoptive parent in locating a child who is available for adoption.

### SUGGESTED CITATION:

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<sup>12</sup> Alabama, Colorado, Kentucky, Louisiana, Maryland, Mississippi, Missouri, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, and West Virginia

<sup>13</sup> California, Florida, Indiana, Michigan, New Jersey, North Carolina, Pennsylvania, Vermont, and Washington



U.S. Department of Health and Human Services  
Administration for Children and Families  
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