



# OFFICE OF CHILDREN, YOUTH AND FAMILIES BULLETIN

COMMONWEALTH OF PENNSYLVANIA \* DEPARTMENT OF PUBLIC WELFARE

NUMBER:

3350-11-01

ISSUE DATE:

April 22, 2011

EFFECTIVE DATE:

April 25, 2011

SUBJECT:

Implementation of Act 101 of 2010

BY:

Cathy A. Utz

Acting Deputy Secretary for Children, Youth and Families

## SCOPE:

County Children and Youth Social Service Agencies  
Private Children and Youth Social Service Agencies  
Juvenile Court Judges' Commission  
Administrative Office of Pennsylvania Courts  
Juvenile Law Center  
Orphans Court Judges  
County Children and Youth Solicitors  
Private Attorneys  
Statewide Adoption and Permanency Network Service System  
American Bar Association  
Pennsylvania Bar Association  
Guardians Ad Litem  
Parent Advocates  
Clerks of the Orphans Court

## PURPOSE:

The purpose of this bulletin is to transmit to individuals and agencies involved in the adoption process the ability and specific steps needed to enter into a voluntary post adoption agreement, access records, request the release of information, or file with and/or request information from Pennsylvania's Adoption Information Registry (PAIR).

## BACKGROUND:

On October 27, 2010, former Pennsylvania Governor Edward G. Rendell signed Senate Bill 1360, Printer's Number 2188, into law. This amendment to the Adoption Act (23 Pa.C.S. Domestic Relations Chapters 21-29), known as Act 101 of 2010, is effective April 25, 2011. Act 101 of 2010 amended the Adoption Act to provide an option for adoptive parents and birth relatives to enter into an enforceable voluntary agreement for ongoing communication or contact to promote and support

**COMMENTS AND QUESTIONS REGARDING THIS BULLETIN SHOULD BE DIRECTED TO:** Regional Directors

Origin: Cindi E. Horshaw, OCYF, 625 Forster Street, Health and Welfare Building, Room 103, Harrisburg, PA 17120  
717.783.7287, [chorshaw@state.pa.us](mailto:chorshaw@state.pa.us)

adoptions of youth for whom contact with their birth family is desired. While the enforceability of post adoption contact agreements is new, the concept is not. For years adoptive and biological parents have recognized the benefits of post adoption contact for youth through informal arrangements for contact. Nothing in this bulletin precludes or discourages the use of these informal arrangements which have benefited children and families through the years. Act 101 also amended the Adoption Act to provide more detailed information in the Pennsylvania Adoption Information Registry and to provide a new means for accessing information and records related to adoptions.

While the Act addresses all adoptions across the Commonwealth including, public and private, the section of this bulletin related to voluntary post adoption agreements addresses Termination of parental rights (TPR) and adoption proceedings specifically arising from juvenile dependency cases under the Pennsylvania Juvenile Act, 42 Pa.C.S. §6301 et seq., as well as those adoptions performed by an agency licensed by the Department to provide adoption services. This bulletin was developed by the Department of Public Welfare (DPW) in consultation with the Administrative Office of Pennsylvania Courts (AOPC) and the Juvenile Court Judges' Commission (JCJC) to do the following:

- facilitate the development of an agreement when appropriate before it is presented to the court; and
- resolve any requests to modify, enforce or discontinue an agreement consistent with the provisions of the Act.

OCYF, as well as public and private adoption agencies and the courts often receive requests from adoptees for information about their birth family, the circumstances surrounding their birth and their biological family's medical information. Likewise, requests are sometimes received from birth parents who are looking to contact their biological children who have been adopted.

The Adoption Medical History Registry (AMHR), which is managed by the Pennsylvania Adoption Exchange (PAE), was created in 1997 to meet amendments to the adoption law enacted by Act 76 of 1995, P.L. 685. The registry serves both birth parents who gave birth in Pennsylvania and then relinquished a child for adoption and Pennsylvania-born adoptees.

Birth parents whose parental rights were terminated may register and update medical history information for themselves and their family members. Information is released to the adoptee when they request it, while ensuring that confidential information, such as the name of the birth parent, is not released. Since the registry is voluntary to birth parents, the AMHR does not have medical information on all adoptions finalized in Pennsylvania.

Because the AMHR relies upon the voluntary submission of information from birth parents, less than 10 adoptees have received any information from the AMHR since its inception in 1997. Although more than 2,500 adoptees have requested information from the registry less than 800 birth parents have registered their information.

Because Act 101 of 2010 requires the Department to collect and maintain medical and social history information on all adoptions finalized in the Commonwealth, all adoptees adopted on or after the effective date of this bulletin will be able to receive much more information about their birth family, including medical and social history information that may benefit them and their descendants.

Prior to the implementation of Act 101 of 2010, the law protected adoption records by sealing them after the finalization and limiting the information that may be provided in response to a request for information. In addition to requesting information from the PAIR, specified individuals may also request from the courts and agencies, where applicable, information that is non-identifying, identifying and request contact with family members. Act 101 of 2010 allows a single request form to be used by individuals to make their request for release of information to each location. The list of individuals who may access information is expanded, as well as the list of individuals who may be the subject of a request for information or contact. In some situations, the subject of a request now includes the grandparents and siblings of an adoptee.

Act 101 allows any court or agency the option to develop a fee structure and to charge reasonable fees for the services provided regarding the release of both non-identifying and identifying information and establishes timeframes for the release of information.

Courts and agencies are required to appoint an authorized representative to conduct a search when a request for information is received. The duties and responsibilities of the authorized representatives are intended to be handled by individuals who are experienced in providing adoption services. DPW will develop standardized training for authorized representatives and provide training opportunities.

Act 101 changes the agency record retention requirement and requires that all agency records are maintained indefinitely as permanent records in their entirety.

Because locating adoption records after an agency closes has always been difficult, Act 101 now requires licensed adoption agencies to notify DPW in writing when ceasing operation as a legal entity. The agency's plan for the closure and transfer of the physical adoption records to another agency licensed by DPW is subject to approval by OCYF. DPW suggested a standard naming convention for agencies to label their case records. DPW must notify the court identified by the closing agency of the name, address and telephone number of the agency to which the physical case records have been transferred. DPW developed a standardized notification to communicate this information to the courts.

#### **DEFINITIONS:**

**Adoption Medical History Registry (AMHR)** - A non identifying database of personal and familial medical information that is provided voluntarily by birth parents and is shared with adoptees upon request.

**Affidavit** - A sworn notarized statement by each party entering an agreement. This statement provides evidence to the court that parties are entering into an agreement knowingly and voluntarily and that the agreement is not the product of coercion, fraud or duress.

**Agency** - A public or private entity, including a county agency, that:

- is licensed, supervised or regulated by the Department of Public Welfare; AND
- provides adoption services.

**Agency records** - All information collected by an agency relating to a birth family, an adoptive family and an adoptee.

**Agreement** - A voluntary written agreement between an adoptive parent and a birth relative that is approved by a court and provides for continuing contact or communication between the child and the birth relative or between the adoptive parent and the birth relative as provided under this subchapter.

**Authorization form** - A form provided by the department on which an adoptee, an adoptive parent or a birth relative can authorize or prohibit the release of identifying information pursuant to the requirements of this chapter.

**Authorized representative** - An individual who is appointed to conduct a search under this chapter and who has completed a standardized training program as required by the department under this chapter.

**Birth relative** - A parent (inclusive of a teen parent), grandparent, stepparent, sibling, uncle or aunt of the child's birth family, whether the relationship is by blood, marriage or adoption.

**Child** - An individual who is under 18 years of age.

**Child Profile/ Child Social Summary** - A thorough written review and assessment of the child's life that includes developmental information, social history information, medical information, behavioral patterns, relationship information and identifying information on the birth and legal family.

**County agency** - A county children and youth social service agency established under section 405 of the act of June 24, 1937 (P.L.2017, No.396), known as the County Institution District Law, or its successor, and supervised by the Department of Public Welfare under Article IX of the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code.

**Court** - As used in the Voluntary Post Adoption Agreement section of this bulletin, the term refers to the court authorized to finalize the adoption of the subject child, i.e. a court with authority under the Pennsylvania Adoption Act.

**Court records** - All petitions, exhibits, reports, notes of testimony, decrees and other papers pertaining to a proceeding under this chapter or former statutes relating to adoption.

**Department** - The Department of Public Welfare of the Commonwealth.

**Facilitation** - a voluntary, informal process by which a neutral third party encourages full participation, promotes mutual understanding, and cultivates shared responsibility among the parties, in order to build a sustainable agreement.

**Mediation** - a voluntary, formal method of dispute resolution involving the parties to an agreement and a neutral mediation professional, working collaboratively to reach a mutual agreement.

**Medical history information** - Medical records and other information concerning an adoptee or an adoptee's birth family that is relevant to the present or future health care or medical treatment of the adoptee or the adoptee's birth family. The term includes, but is not limited to, the following:

- Otherwise confidential or privileged information, if identifying information has been removed under section 2925 (relating to providing information from registry).
- Information about the birth parents of a child that may concern a potential hereditary or congenital medical problem.

**Model Agreement Form** – As used in the Voluntary Post Adoption Agreement section of this bulletin, the model agreement form is the recommended template to be used when developing an agreement. If the template is not used as developed, one which contains all of the key areas as outlined on the form and in the bulletin can be used.

**Party to an Agreement** – As used in the Voluntary Post Adoption Agreement section of this bulletin, party to an agreement herein refers the prospective adoptive parent(s) and birth relatives.

**Pennsylvania Adoption Exchange (PAE)** - PAE manages the statewide registries including the Waiting Child Registry, a listing of children in foster care in need of adoptive families; the Resource Family Registry, a listing of foster, adoptive and kinship families; and, the Adoption Medical History Registry which contains medical information that is voluntarily provided by adoptees and birth families.

**Private Adoption** – An adoption which occurs entirely independent of the public child welfare agency, either through a private adoption agency and/or with a private attorney.

**Public Adoption** – The adoption of a child in the custody of a public child welfare agency.

**Siblings** – As used in the Voluntary Post Adoption Agreement section of this bulletin, siblings herein refers to siblings of an adoptee either through blood, marriage or adoption.

**Subject child** – As used in the Voluntary Post Adoption Agreement section of this bulletin, subject child herein refers to the adoptee who is the subject of the agreement.

**Social history information** - The term includes, but is not limited to, the following:

- Information about the adoptee and birth relatives of the adoptee, including economic, cultural and ethnic information.
- A developmental history of the adoptee, including the circumstances at birth, early development and subsequent age-appropriate task development.
- The social experiences of the adoptee, including abuse and neglect, out-of-home care and patterns of interpersonal relationships.
- The educational experiences of the adoptee, including the name of schools attended and dates of enrollment, academic performance, extracurricular activities and special interests.
- The current functioning of the adoptee, including behavioral patterns and relationships.
- The circumstances surrounding the adoption.

**Statewide Adoption and Permanency Network (SWAN)** - The SWAN Program is a network of public and private agencies and organizations that have a common goal of improving the opportunity for timely permanency for Pennsylvania children. SWAN provides direct services to foster children and the families who serve them including Child Profile, Family Profile, Child Specific Recruitment, Child Preparation for Permanency, Placement, Finalization and Post-permanency Services. In addition to direct services numerous support services are also provided.

**Summary of original birth record** - The summary of original birth record, consisting of only the names and ages of the birth parents, the date and county of the birth of the child and the name of the child given at birth.

**DISCUSSION:**

**A. Voluntary Post-Adoption Agreement:**

The United States Department of Health and Human Services recommended more than a decade ago that states establish laws to allow the courts to approve voluntary post-adoption contact agreements between birth and adoptive families that are legally enforceable. Twenty-four states currently have statutes for voluntary post-adoption contact agreements. These voluntary agreements serve to help more children in foster care find a permanent, adoptive family who would be open to allowing them contact with a birth relative.

The idea of authorizing voluntary enforceable post-adoption contact agreements is not new to Pennsylvania. The Joint State Government Commission made a similar recommendation in its report in 2001. According to their report a formal process to establish voluntary and enforceable post-adoption contact agreements helps protect the legal rights and best interests of children in the adoption process. While many children leave the foster care system to return to live with their birth parents or other relatives, some children experience circumstances that prevent their return home. These children and youth also need permanent homes and the law favors adoption as the next best option for permanency.

Unfortunately, in many instances, the process to legally free children for adoption never occurs, especially for youth age 13 or older. In order to be freed for adoption, the parental rights of the parent must be terminated. The U.S. General Accounting Office reports that a common reason parental rights are not terminated is resistance on the part of an older child to agree to be adopted. For many youth in foster care, the expectation that they would have to completely sever contact with their birth families in order to be adopted often causes fear and opposition to the process. This resistance likely contributes to the fact that while nearly half of all children in foster care in Pennsylvania are 13 and older, only about 8 percent of adoptions from foster care involve teens.

The enactment of Act 101 of 2010 provides an option for adoptive parents and birth relatives to enter into a voluntary agreement for ongoing communication or contact. This option will result in a paradigm shift in Pennsylvania where ongoing contact has not traditionally occurred nor have open adoptions. An agreement cannot be entered for a child who is 12 years of age or older, without his or her consent. The agreement must be one that:

- (1) is in the best interest of the child;
- (2) recognizes the parties' interests and desires for ongoing communication or contact;
- (3) is appropriate given the role of the parties in the child's life; and
- (4) is subject to approval by the court.

This bulletin lays out the requirements of the statute; but also provides best practice considerations. Ongoing education and training will need to be provided to all agencies and individuals who have a role within the statute.

An intent of this Act is to expedite and promote permanency through adoption of children in foster care. The permanency process should not be delayed pending the development of these agreements. This emphasizes the importance of having discussions early in the life of the case with children, birth relatives and pre-adoptive parents.

Act 101 provides that the agreement shall be filed with the court that finalizes the adoption, and that the court shall approve the agreement if it finds that the agreement has been entered knowingly and voluntarily and is in the best interest of the child. However, the Act does not indicate when the parties may or should begin working on the terms of an agreement. In many cases, the best time to begin encouraging the parties to discuss the possibility of entering into an agreement is when it becomes apparent that the agency's efforts at reunification have not been successful and that adoption may be the most appropriate alternative for the child. Beginning those discussions at this time allows the birth parents to adjust to the idea of adoption, and may allow a contested termination to become a voluntary relinquishment. Even amicable negotiations can be protracted, because of the legal and emotional impact of termination. Starting the process before the court hears the termination petition will enhance the possibility of the adoption being concluded with minimal delay and less emotional and financial toll on all the participants. Starting the process early may also allow the court, in the person of the dependency judge, to give the parties feedback on whether the terms they are considering will satisfy the requirements of Act 101 for an enforceable agreement.

While the court may approve the agreement prior to the finalization of the adoption, the agreement does not take effect until the actual adoption occurs. Therefore, if an agreement is approved and the adoption does not occur, the agreement would be void. In addition, when appropriate, a visitation plan and contact between parties can occur as agreed upon by the agency and/or court for the period of time leading up to the adoption being finalized at which time the voluntary post adoption contact agreement goes into effect.

If an agreement is approved by the court, but the adoption is finalized outside of the Commonwealth, the adoption is subject to the law of the state where the adoption was finalized and the agreement may not be legally binding or enforceable.

#### **I. Notification:**

Act 101 requires an agency or anyone representing the parties in any adoption, public or private, to notify children, birth parents and prospective adoptive parents of the option to enter into a voluntary post adoption agreement. The following guidance is specific to adoptions resulting from juvenile dependency proceedings involving public child welfare agencies, as well private agency adoptions performed by an agency licensed by the Department to provide adoption services – and therefore while not required in strictly private adoptions, is highly recommended. Guidance has been provided in the bulletin regarding private agency adoptions and attention must be paid to the uniqueness of these adoptions since they can be international or domestic. With that being said, in adoptions resulting from juvenile dependency proceedings, the responsibility to provide notice rests with the county children and youth agency. If the notification is provided by an agency or anyone representing parties in an adoption, including an attorney or private agency, on behalf of the county children and youth agency, the county children and youth agency must maintain documentation in the case record in accordance with the requirements established within this bulletin.

Formal notification should be provided using the attached template (Appendix A Notification Letter) or in a county developed format which contains all of the required elements. While formal notification must be provided at the prescribed intervals, ongoing dialogue regarding this option should occur throughout the life of the case on an informal basis and become integrated into every day casework practice when it becomes apparent that the agency's efforts at reunification have not been successful and that adoption may be the most appropriate alternative for the child which would include concurrent planning or permanency planning efforts. It is the responsibility of the agencies and individuals involved to ensure that if any party expresses interest in the development of an agreement, this desire is shared amongst the parties and action is taken to assist in the development as per the bulletin. These discussions and actions should be clearly documented in the case record.

Also, while formal notification only has to be provided to the prospective adoptive parent, birth parent and all children regardless of age, conversations can be had with the other birth relatives who may be able to enter into an agreement. The option to enter into a voluntary post adoption agreement is not meant as a means to discontinue or discourage existing contact or communication children have with individuals, such as teachers, former foster parents, coaches, etc who do not have the option to enter into one of these agreements. These already existing relationships should continue to be fostered and encouraged as a means of maintaining life long connections.

Individuals who have the option to enter into an agreement must be aware that the development of this agreement is an option not a right, and that not all individuals receiving formal notification automatically come to an agreement or have the agreement approved by the court. The option to enter into an agreement cannot be used as a means of coercion in the adoption process.

When formal notification is provided, a dated, signed copy of the notification letter must be maintained in the case record for each individual to whom notification was provided. If signatures cannot be obtained in person, sending certified signature mail or by electronic means with confirmation is recommended. It is also recommended that a copy of the signed notification letter accompany the petition to terminate parental rights. If the individual refuses to sign, documentation of their refusal must be maintained in the case record. In the event an individual cannot be located, documentation must be maintained in the case record to show evidence of attempts to locate him or her. In the event the notification is provided to a child who is unable to sign the form because they are too young to sign their name, notation should be made on the notification letter and a copy must be maintained in the case record.

Providing notification does not mean that an agreement will actually be reached. It is up to the adoptive parents, birth relatives and the child(ren) to determine whether they wish to enter into an agreement but it is ultimately up to the court which will finalize the adoption to approve the agreement. Any agreement not approved by the court is not legally enforceable.

Notification should also occur through ongoing discussion as part of concurrent planning or permanency planning efforts. This should be done in a manner that parties understand by individuals involved in the case including but not limited to, the county children and youth workers (CCYA), private agency employee(s), prospective adoptive parent(s), parent advocate(s) and Guardians Ad Litem (GAL). Sensitivity must be given in regard to how this information is shared with children to reduce the risk of potential trauma that may result from the notification, particularly if a party to the agreement had perpetrated abuse or traumatized the child previously.

Formal notification must be provided to the birth parent, child and prospective adoptive parent at the earliest interval prescribed below. As stated earlier, while formal notification must only be provided at the earliest prescribed interval, ongoing dialogue regarding this option should occur throughout the life of the case on an informal basis and become integrated into every day casework practice provided as part of concurrent planning or permanency planning efforts. One notice at the earliest prescribed interval is required. Subsequent notifications are not required. If one of the intervals has passed and an adoptive parent has only recently been identified, notice should be provided at the earliest interval following the adoptive parent being identified.

While intervals have been prescribed, they were not meant as a means to avoid having to provide notification in cases where TPR has occurred, but finalization has not. For the cases where all of the prescribed intervals have passed, but yet finalization has not yet occurred, formal notice should be provided as soon as possible in order for the parties to decide whether to enter into a voluntary post-adoption contact agreement.

**Birth Parent(s):**

The earliest of:

1. Change of goal to adoption on the Family Service Plan (FSP);
2. Filing of the petition to change the goal to adoption; or
3. In advance of filing of the petition to terminate parental rights.

**NOTE: A copy of all notices to birth parents who are represented by an attorney shall also be sent to the attorney.**

**Prospective Adoptive Parent:**

The earliest of:

1. Change of goal to adoption on the Family Service Plan (FSP) (unless there is not an adoptive placement identified at that time);
2. Filing of the petition to change the goal to adoption (unless there is not an adoptive placement identified at that time);
3. In advance of filing of the petition to terminate parental rights (unless there is not an adoptive placement identified at that time); or
4. At the point they have been identified as a prospective adoptive resource for a specified child (if notice was not already provided).

**NOTE: A copy of all notices to prospective adoptive parents who are represented by an attorney shall also be sent to the attorney.**

**Child:**

The earliest of:

1. Change of goal to adoption on the Family Service Plan (FSP);
2. Filing of the petition to change the goal to adoption; or
3. In advance of filing of the petition to terminate parental rights.

**NOTE: A copy of all notices sent to children who are represented by a guardian ad litem and/or attorney shall also be sent to their guardian ad litem and/or attorney. If the child is represented by two attorneys, one serving as a guardian ad litem and a separate attorney serving as a child advocate, a copy of the notice shall be sent to each.**

Providing formal notification to prospective adoptive resources and the specified child at the point they have been identified as a potential match provides an opportunity for this option to be discussed with all parties in order to make the best possible match for the child and family and assure thorough permanency planning.

**Private Agency Adoptions:**

Agencies licensed by the Department to provide private adoption services are also required under the statute to provide notification. These adoptions can include domestic, as well as international adoptions that will be finalized in the Commonwealth. It is recommended that agency staff have ongoing discussions regarding this option as part of routine casework practice with all applicable parties including those looking to make an adoption plan for their child, as well as the children and prospective adoptive parents. In international adoptions where the child may be abandoned, orphaned or the parent's whereabouts are unknown, documentation must be maintained in the case record stating such. This documentation will serve to justify why notification was not provided.

While formal notification shall be provided to birth parents no later than when provided notice of the hearing to terminate parental rights, informal conversation should also occur as follows:

- during the initial counseling session(s); and
- immediately before their child is matched with an adoptive family.

While formal notification shall be provided to prospective adoptive parents at the time a child is placed with them, informal conversations would typically occur as follows:

- during the family study education and/or approval process; and
- immediately before they are matched with the child.

Formal notification shall be provided to the child at the time he or she is placed with an adoptive family.

## II. Agreement:

The agreement is a written voluntary agreement, approved by the court, between an adoptive parent and a birth relative. This agreement allows for continuing contact or communication between the subject child(ren) and the birth relative or between the adoptive parent and the birth relative. Children 12 years of age and older must consent before an agreement is developed. For children under 12 years of age, it is left to the discretion of the parties involved whether or not the child should enter into an agreement. Where the prospective adoptive parent is not adopting all of the subject child(ren)'s siblings, each such sibling has the opportunity to develop and enter into an agreement. Any sibling freed for adoption through the termination of parental rights, following a dependency proceeding, who is under 18 years of age shall be represented by a guardian ad litem in the development of an agreement.

Agreements must be filed with a court that is authorized to finalize the adoption of the child (i.e. a court with authority under the Pennsylvania Adoption Act) and must be approved on or before the date of any adoption decree. Agreements are not legally enforceable unless they have been approved by the court. An agreement shall cease to be enforceable on the date the child turns 18 years of age unless the agreement otherwise stipulates or is modified by the court. The law provides that the court shall approve the agreement if:

- (1) The agreement has been entered into knowingly and voluntarily by all parties. An affidavit made under oath must accompany the agreement affirmatively stating that the agreement was entered into knowingly and voluntarily and is not the product of coercion, fraud or duress. The affidavit may be executed jointly or separately.
  - o For an affidavit to serve as a sworn statement it must be notarized. Each party to an agreement must sign a separate affidavit before a notary, and each signed and notarized affidavit must accompany the agreement when it is presented to the court.
  - o A notarized affidavit is not meant to complicate the process of parties entering an agreement, but instead serves to protect the interests of parties and the integrity of the agreement. This is especially important considering that not all parties to an agreement attend the court hearing when the agreement is reviewed.
  - o Agencies should develop processes to assist in securing signed affidavits from each party to ensure that the process of developing an agreement doesn't delay permanency.
  - o The requirement of an affidavit applies to parties of an agreement who may be minors. Such as birth relatives who are under age 18 (siblings, teen parent, etc).
- (2) The agreement is in the best interest of the child. In making that determination, factors that the court may consider include, but are not limited to, the following:
  - (i) The length of time that the child has been under actual care, custody and control of a person other than a birth parent and the circumstances relating thereto.
  - (ii) The interaction and interrelationship of the child with birth relatives and other persons who routinely interact with the birth relatives and may significantly affect the child's best interests.
  - (iii) The adjustment to the child's home, school and community.
  - (iv) The willingness and ability of the birth relative to respect and appreciate the bond between the child and prospective adoptive parent.

- (v) The willingness and ability of the prospective adoptive parent to respect and appreciate the bond between the child and the birth relative.
- (vi) Any evidence of abuse or neglect of the child.

### **Development of the Agreement:**

Development of the agreement is a process that may involve agency staff, attorneys, adoptive parents, birth relatives and children. At all times, the best interest of the subject child should be the paramount consideration. The process should consider the developmental stage, the emotional and social background of the child, and the wishes of the child (if they can be ascertained) as well as the dynamics between the parties.

Consideration should be given to the development of separate agreements for each birth relative depending on the complexity of the situations. This decision should be made on a case by case basis, taking into account the different types, duration, frequency of contact, and the degree of confidentiality to be had with each birth relative. In adoptions involving the county children and youth agency, Statewide Adoption and Permanency Network (SWAN) units of service are a viable option to help facilitate the development of the agreement and mediate disputed issues. The appropriate SWAN unit of service to request would be based on where the case currently stands in the permanency process.

Key areas to be included in the agreement, as outlined on the recommended model agreement (Appendix B Voluntary Post-Adoption Contact Agreement) and the attached instruction sheet (Appendix C), include:

- The parties to the agreement;
- The purpose of the agreement;
- The type of contact or communication between the parties and the details regarding this contact including the frequency, duration, location, and stipulations to the contact;
- The participants in each type of contact;
- The process for modifying, enforcing or discontinuing the agreement; and
- Any other additional information surrounding the parameters of the contact.

Where the prospective adoptive parent is not adopting all of the subject child(ren)'s siblings, each such sibling has the opportunity to develop and enter into an agreement. Any sibling freed for adoption through the termination of parental rights, following a dependency proceeding, who is under 18 years of age shall be represented by a guardian ad litem in the development of an agreement.

Act 101 provides that the agreement shall be filed with the court that finalizes the adoption, and that the court shall approve the agreement if it finds that the agreement has been entered knowingly and voluntarily and is in the best interest of the child. However, the Act does not indicate when the parties may or should begin working on the terms of an agreement. In many cases, the best time to begin encouraging the parties to discuss the possibility of entering into an agreement is when it becomes apparent that the agency's efforts at reunification have not been successful and that adoption may be the most appropriate alternative for the child. Beginning those discussions at this time allows the birth parents to adjust to the idea of adoption, and may allow a contested termination to become a voluntary relinquishment. Even amicable negotiations can be protracted, because of the legal and emotional impact of termination. Starting the process before the court hears the termination petition will enhance the possibility of the adoption being concluded with minimal delay and less

emotional and financial toll on all the participants. Starting the process early may also allow the court, in the person of the dependency judge, to give the parties feedback on whether the terms they are considering will satisfy the requirements of Act 101 for an enforceable agreement.

**Note: All parties must agree to some form of continuing contact for an agreement to be reached. For instance, if a prospective adoptive parent does not want to enter into an agreement for continuing contact, there can be no agreement. Moreover, there is no obligation on any party, including prospective adoptive parents, to engage in facilitation or mediation services.**

### **Facilitation:**

Facilitation in developing an agreement should be provided by a **neutral** third party, similar to Family Group Conferencing. Facilitators could be an employee from the county children and youth agency not directly involved in the specific case, SWAN affiliate agency worker, contracted outside agency worker, or other individual chosen by the family to facilitate. The facilitator should be knowledgeable about the statute including the purpose and intent of the voluntary post adoption agreement. Neutral facilitation is important to ensure parties do not feel coerced in the development of an agreement.

Historically, SWAN affiliate agencies have helped family members decide what, if any, level of informal post-adoption contact will occur following an adoption. As previously mentioned, SWAN units of services can be utilized to assist in the development of agreements if the county agency is involved in the case. Utilizing SWAN may help ensure that the process of developing an agreement integrates with other permanency services the child(ren) and family may be receiving. This would require the SWAN affiliate agency to have professionals on staff with the skills and knowledge to provide the requested service. The specific unit of service requested would depend on where the case currently stands in the permanency process.

### **Mediation:**

Mediation is different than facilitation in that mediation is a formal method of dispute resolution performed by a professional who has received specific training in the practice of mediation. Mediation can be sought privately by parties looking to enter into, modify or enforce an agreement and this would occur at the expense of the individuals themselves. In addition, some SWAN affiliate agencies have trained mediators who may provide mediation services through the units of service. In cases where disputes arise regarding modification, enforcement or discontinuance of an agreement, the adoptive family may access SWAN post-permanency units for mediation. Post-Permanency Services would have to be requested directly by the adoptive family by contacting the SWAN Helpline at 1-800-585-SWAN.

### **Modification:**

There are formal and informal types of modification that can occur with agreements, but in order for modifications to be legally enforceable, they must be approved by the court that finalized the adoption. Parties to an agreement may elect to utilize SWAN post-permanency units of service for facilitation and/or mediation in seeking to modify an agreement. Post-Permanency Services would have to be requested directly by the adoptive family by contacting the SWAN Helpline at 1-800-585-SWAN. Post-permanency services, unlike all other SWAN units of service, are available to any

adoptive family or child for whom adoption has been achieved, involving either public or private adoptions. For specifics related to the appointment of guardians ad litem when seeking to modify an agreement, refer to the section entitled "Appointment of Guardians Ad Litem" (GALs) below.

#### Formal Modification:

Formal modification is making changes to an agreement that have been approved by the court and thereby legally enforceable. Formal modification of an agreement can only be sought by the adoptive parent or the subject child who is 12 years of age or older. In order to seek formal modification to an agreement, action must be filed in the court that finalized the adoption. Before the court may enter an order modifying an agreement, it must find by clear and convincing evidence that modification serves the needs, welfare and best interest of the child. Examples of formal modification include:

- By being mutually agreed upon and then being provided directly to the Court for consideration and approval, thereby making the modification enforceable; or
- Through the use of facilitation or mediation and then being provided to the Court for consideration and approval, thereby making the modification enforceable

#### Informal Modification:

Parties may also informally modify an agreement. This could be done to ensure the agreement is appropriate considering the development and needs of the child over time, as well as any minor accommodations needed that may not warrant court involvement, such as changing the time or location of contact. Informal modifications are not legally enforceable because they are not approved by the court. Informal modification can be done when parties can agree as to what is in the best interests of the child which will prevent the need to return to the court. Examples of informal modification include:

- Through the use of facilitation or mediation, but not being provided to the Court for approval, which would make the modification not legally enforceable; or
- Through parties modifying the agreement on their own.

#### Enforcement:

Any party to an agreement, a sibling or a child who is the subject of an agreement may seek to enforce an agreement by filing an action in the court that finalized the adoption. These parties may request enforcement of the contact or communication specifically outlined in the agreement but may not request monetary damages.

For an agreement to be enforceable, it must be:

- (1) In writing.
- (2) Approved by the court on or before the date for any adoption decree.
- (3) If the child is 12 years of age or older when the agreement is executed, the child must consent to the agreement at the time of its execution.

Before the court may enter an order enforcing an agreement, it must find all of the following:

- (1) The party seeking enforcement of the agreement is in substantial compliance with the agreement.
- (2) By clear and convincing evidence, enforcement serves the needs, welfare and best interest of the child.

The court issuing final approval of an agreement shall have continuing jurisdiction over enforcement of the agreement until the child turns 18 years of age, unless the agreement otherwise stipulates or is modified by the court.

For specifics related to the appointment of guardians ad litem when seeking to enforce an agreement, refer to the section entitled "Appointment of Guardians Ad Litem" (GALs) below.

Parties to an agreement may elect to use facilitation and/or mediation when seeking to enforce an agreement. If facilitation or mediation is sought to enforce an agreement, SWAN units of service, specifically post-permanency units of service, could be requested. Post-permanency services, unlike all other SWAN units of service, are available to any adoptive family or child for whom adoption has been achieved, either through a public or private adoption.

#### **Discontinuance:**

A party to an agreement or a child that is at least 12 years of age or older may seek to discontinue an agreement by filing an action in the court that finalized the adoption. Before the court may enter an order discontinuing an agreement, it must find by clear and convincing evidence that discontinuance serves the needs, welfare and best interest of the child. For specifics related to the appointment of guardians ad litem when seeking to discontinue an agreement, refer to the section entitled "Appointment of Guardians Ad Litem" (GALs) below.

#### **Appointment of Counsel:**

Parties to an agreement are not entitled to court-appointed counsel for the purposes of modifying, enforcing or discontinuing an agreement, but are free to secure counsel at their own expense.

#### **Appointment of Guardians Ad Litem (GALs):**

When appointing a GAL, the court may appoint the same attorney who represents or has represented the child in any dependency or termination of parental rights proceedings. Appointment of GALs during the specific activities related to the agreements is as follows:

#### **Development:**

Where siblings have been freed for adoption through the termination of parental rights, following a dependency proceeding, and the prospective adoptive parent is not adopting all of the siblings, each such sibling who is under 18 years of age **shall** be represented by a GAL in the development of an agreement.

Modification:

Only a child over the age of 12 who is the subject of an agreement can seek to modify an agreement. GALs **may** be appointed to represent the interests of the subject child when seeking to modify an agreement.

Enforcement:

GALs **may** be appointed to represent the interests of the subject child and a sibling under 18 years of age when seeking to enforce an agreement.

Discontinuance:

GALs **may** be appointed to represent the interests of the subject child and a sibling under 18 years of age when seeking to discontinue an agreement.

Costs:

If the court finds that an action brought to modify, enforce or discontinue an agreement was wholly insubstantial, frivolous or not advanced in good faith, the court may award attorney fees and costs to the prevailing parties.

**B. Information Registry:**

**The Pennsylvania Adoption Information Registry (PAIR):**

Act 101 of 2010, which amended the Adoption Act, required the Department of Public Welfare to create and maintain an adoption medical history registry and a social history information registry. Since the AMHR was already in existence and managed by the PAE, that registry was expanded to include the additional medical requirements as well as the social history requirements of Act 101 of 2010.

This expanded registry, now known as the Pennsylvania Adoption Information Registry (PAIR) is an electronic database maintained by the PAE. The PAIR receives, files and retains medical and social history information for all adoptions finalized or registered in the Commonwealth.

The PAIR collects:

- Medical records and other information concerning an adoptee or an adoptee's birth family that is relevant to the present or future health care or medical treatment of the adoptee or the adoptee's birth family including but not limited to otherwise confidential or privileged information, if identifying information has been removed;
- Information about the birth parents of a child that may concern a potential hereditary or congenital medical problem;
- Information about the adoptee and birth relatives of the adoptee including economic, cultural and ethnic information and a developmental history of the adoptee including:

- The social experiences of the adoptee, including child abuse and neglect, out-of-home care and patterns of interpersonal relationships;
- The educational experiences of the adoptee, including the name of schools attended and dates of enrollment, academic performance, extracurricular activities and special interests;
- The current functioning of the adoptee, including behavioral patterns and relationships;
- The circumstances surrounding the adoption; and
- A summary of the original birth record that consists only of the names and ages of the birth parents, the date and county of the birth of the child and the name of the child given at birth.

Effective the date of this bulletin, all public and private child welfare agencies and individuals licensed by the Department to provide adoption services must provide medical and social history information on all children whose adoptions are finalized or registered in Pennsylvania and for whom the agency or individual has case responsibility to the PAIR.

The statute also requires the courts to provide any statements regarding medical and/or social history information that is filed in the court that terminated the parental rights. In order to reduce a duplication of efforts and the receipt of the same information from various agencies and the courts, it is suggested that the courts and the agencies develop a collaborative process to ensure that the information is provided to the PAIR.

#### **Filing Medical and Social Information and/or Contact Requests to the PAIR:**

Forms for registering, requesting information, updating information, authorizing the release of information and withdrawing the authorization of release of information with the PAIR can be found online at <http://www.adoptpakids.org/Forms.aspx> (See Appendix D, Act 101 Registration Form, Appendix E, Request for Adoption Information Form, Appendix, F, Adoptee Authorization to Release Information and Registration Form, Appendix G, Birth Parent Authorization to Release Information and Registration Form, Appendix H, Withdrawal of Authorization to Release Information Form).

#### **Public and Private Child Welfare Agencies and Licensed Individuals:**

All public and private child welfare agencies and individuals licensed by the Department to provide adoption services shall submit medical and social history information on all children whose adoptions are finalized or registered in the Commonwealth to the PAIR.

Agencies/individuals will electronically submit all medical history, including medical records contained in the child's agency record concerning the adoptee or the adoptee's birth family that are relevant to the present or future health care or medical treatment of the adoptee or the adoptee's birth family including otherwise confidential or privileged information. Identifying information contained in the medical records shall be removed by the submitting agency prior to uploading the information unless there is a signed consent on file to provide the information to the PAIR for the purposes of sharing with the individuals named in the statute (see page 19, Requesting Medical and Social Information and/or Contact Requests from the PAIR). Copies of the signed consent to release the information shall be maintained in the child's file and included in the medical history that is uploaded to the PAIR.

It is recognized that some medical information is protected by law and may only be shared if a signed consent to release the information has been obtained. Additionally, some agency records may contain medical records or information that was obtained from providers that expressly prohibit the sharing of that information. Agencies/individuals should follow their established policies and procedures regarding the sharing of such medical information and shall not upload information that they are forbidden by statute to provide.

Examples of the types of medical information that may be submitted as part of the medical history includes medical records and agency records including, but not limited to, birth information, immunizations, dental care, information regarding serious illnesses, surgeries, hospitalizations, handicaps, allergies, medications and information about the birth parents of a child that may concern a potential hereditary or congenital medical problem.

Agencies/individuals will electronically submit all social history information contained in the record including information about the adoptee and birth relatives of the adoptee including their economic, cultural and ethnic information; a developmental history of the adoptee including the circumstances at birth, early development and subsequent age-appropriate task development; the social experiences of the adoptee, including child abuse and neglect history information, out of home care and patterns of interpersonal relationships; the educational experiences of the adoptee, including the name of the schools attended and dates of enrollment, academic performance, extracurricular activities and special interests; the current functioning of the adoptee, including behavioral patterns and relationships; and, the circumstances surrounding the adoption.

The social history information required is contained in the SWAN Child Profile if one exists. Agencies/individuals that are not SWAN affiliate agencies or SWAN workers may visit [www.diakon-swan.org](http://www.diakon-swan.org) to find an outline of the SWAN Child Profile that they may use to meet this requirement or they may develop their own format provided they include all of the social history information required as listed above. A free online training of how to complete a child profile is available at [www.swan-online.org](http://www.swan-online.org). The Child Profile or social summary that is uploaded to PAIR must be current at the time of finalization and may include an updated Child Profile or social summary.

Agencies/individuals will register each child whose adoption was finalized or registered in the Commonwealth by completing the Act 101 electronic registration form (See Appendix D for a sample of the electronic form) and electronically uploading all medical history information and all Child Profiles or Child Social Summaries in a read only Portable Document Format (PDF) to the PAIR at [www.pagov-pair.org](http://www.pagov-pair.org). County agencies may collaborate with SWAN affiliate agencies and other private providers to develop a plan for the submission of information and may delegate that responsibility to the SWAN affiliate or private provider.

The PAIR will provide acknowledgement of the receipt of all information received to the agency/individual that submitted the information within 30 calendar days. Agencies/individuals should maintain the acknowledgement in the child's record as verification that the information was submitted. If a county delegates the responsibility of uploading the information to a SWAN affiliate or private provider, the provider should provide a copy of the acknowledgement to the county agency as verification that the information has been uploaded to the PAIR.

### **Adoptees, Adoptive Parents and Birth Parents:**

Adoptees, adoptive parents and birth parents may submit and update medical and social history information with the registry at any time. In addition to providing medical and social history information, adoptees, adoptive parents and birth parents may authorize the release of identifying information and may amend or withdraw their authorization to release identifying information at any time by updating their information with the PAIR.

Adoptees and adoptive parents may also notify the PAIR whether or not they wish to have contact with the birth family and may update or change that request for contact at any time. Birth families may notify the PAIR whether or not they wish to have contact with the adoptee or adoptive family and may update or change that request for contact at any time.

Forms for requesting information and/or contact, registering information, updating information, authorizing the release of information and withdrawing the authorization of release of information or contact with the PAIR can be found online at <http://www.adoptpakids.org/Forms.aspx> (See Appendix E, Request for Adoption Information Form, Appendix F, Adoptee Authorization to Release Information and Registration Form, Appendix G, Birth Parent Authorization to Release Information and Registration Form, Appendix H, Withdrawal of Authorization to Release Information Form).

Medical and social history information, updates to the registry and the filing of or changes to authorizations to release information will only be accepted in hard copy and must be signed by the registering individual or by the person requesting the change or update.

The PAIR will provide written acknowledgement of the receipt of all information received to the submitter of the information within 30 calendar days.

### **The Courts:**

If a statement regarding medical and social history information is filed in the court that terminated the parental rights, a copy of the statement shall be forwarded to the PAIR. Courts shall register the information with the PAIR by completing and electronically submitting the Act 101 Registration Form (Appendix D) and the medical and social history statements in a read only Portable Document Format (PDF) to [www.pagov-pair.org](http://www.pagov-pair.org). To reduce the duplication of efforts county agencies and private providers should collaborate with the courts to determine who will be responsible for uploading information to the PAIR. The court may request the county agency or private provider to upload the information to the PAIR on their behalf.

The PAIR will provide written acknowledgement of the receipt of all information received to the submitter of the information within 30 calendar days. If a court delegates the responsibility of uploading the information to a county agency or private provider, the county agency or provider should provide a copy of the acknowledgement to the county court as verification that the information has been uploaded to the PAIR.

### **Requesting Medical and Social Information and/or Contact Requests from the PAIR:**

Information contained in PAIR may be requested by and released to:

- An adoptee who is at least 18 years of age;
- An adoptive parent of an adoptee who is under 18 years of age or adjudicated incapacitated or deceased;
- A legal guardian of an adoptee who is under 18 years of age or adjudicated incapacitated;
- A descendant of a deceased adoptee;
- A birth parent of an adoptee who is at least 21 years of age;
- A parent of a birth parent of an adoptee who is at least 21 years of age if the birth parent consents, is incapacitated or deceased; and,
- A birth sibling of an adoptee if both the birth sibling and the adoptee are at least 21 years of age and:
  - The birth sibling remained in the custody of the birth parent and the birth parent consents, is deceased or adjudicated incapacitated;
  - Both the birth sibling and adoptee were adopted out of the same birth family; or,
  - The birth sibling was not adopted out of the birth family and did not remain in the custody of the birth parent.

Requests for medical and social history information and requests for contact by adoptees, adoptive parents, legal guardians, descendants of deceased adoptee, birth parents and birth siblings will only be accepted in hard copy and must be signed by the registering individual. Forms for providing and requesting information and/or contact can be found online at <http://www.adoptpakids.org/Forms.aspx> (See Appendix F, Adoptee Authorization to Release Information and Registration Form, Appendix G, Birth Parent Authorization to Release Information and Registration Form, Appendix E, Request for Adoption Information Form).

### **Release of Information Contained in the PAIR:**

The PAIR will release either identifying or non-identifying information to the above named individuals.

### **Requests for Non-identifying Information:**

Non-identifying information shall be provided to the requestor within 30 calendar days of the request. Prior to the release of any information on file, the PAIR will redact any identifying information such as name, aliases, address, former addresses.

### **Requests for Identifying Information:**

Identifying information will only be released if an authorization to release identifying information has been filed by the adoptee or birth parent. Identifying information that may be released includes child profiles/child social summaries, medical information and information obtained on the birth parent or adoptee registration forms submitted. Identifying information shall be provided to the requestor within 30 calendar days of the request.

### **Requests for Contact:**

Individuals who submit a request for contact to the PAIR will be provided with the birth family or adoptees identifying information that contains the contact information provided there is an authorization to release identifying information on file. If there is no authorization to release identifying information on file, within 30 calendar days the individual who submitted the request for contact will be notified of that fact in writing and will be asked to submit a Birth Parent or Adoptee Authorization to Release Information and Registration Form available online at <http://www.adoptpakids.org/Forms.aspx>. (See Appendix F, Adoptee Authorization to Release Information and Registration Form and Appendix G, Birth Parent Authorization to Release Information and Registration Form)

Additionally, all public and private child welfare agencies licensed to provide adoption services are the Department's designees to perform searches to locate the subject of the request. If there is no authorization form on file to release identifying information the PAIR will recommend the requestor contact the DPW licensed agency that managed their adoption or the court that finalized their adoption to request a search.

Courts and agencies, or their designees, involved in performing searches for birth family or adoptees shall contact the PAIR to see if there is an authorization form on file and if so, whether the authorization allows for the release of identifying or non-identifying information. No other information will be provided to the court, agency or their designee. The court, agency or their designee will notify the individual for whom they are performing the search if there is information on file so that the individual can then request the information from the PAIR. The PAIR will only release information upon written request to the individuals noted above, provided an authorization form for the release of the information is on file.

If the PAIR receives identifying or non-identifying information from an adoptee or birth parent and there is already a request for information from an adoptee or birth parent on file, within 120 days the PAIR will provide the information to the individual who previously requested it if the individual is at least 21 years of age.

### **C. Release of Information and Access to Records:**

Public and private adoption agencies and the courts frequently receive requests for information related to adoption. These requests come most frequently from adoptees who want information about the circumstances of their birth, their family members and medical information. Many adoptees are also interested in pursuing contact with their birth family. Birth parents frequently contact agencies and courts because they want contact with their biological children who were adopted.

Prior to the implementation of Act 101 of 2010, the law protected adoption records by sealing them after the finalization and limiting the information that may be provided in response to a request for information.

In addition to requesting information from the PAIR, specified individuals may also request from the courts and agencies, where applicable, information that is non-identifying, identifying and request contact with family members. Act 101 of 2010 allows a single request form to be used by individuals to make their request for release of information to each location. The Appendices in this Bulletin includes the forms to be used to request information from the PAIR and the courts and agencies (see Appendix K – Court and Agency Request for Adoption Information (Non-identifying or Identifying) or Contact with Specified Persons).

However, effective the date of this bulletin, the list of individuals who may access information is expanded. The list of individuals who may be the subject of a request for information or contact is also expanded. In some situations, the subject of a request now includes the grandparents and siblings of an adoptee. Consequently, Act 101 greatly increases the opportunities for openness of adoption information in PA.

Although medical history information has been available since 1997 through the Adoption Medical History Registry, Act 101 of 2010 expands the type of information that may be collected and released. In addition to medical history, the registry is now required to receive an extensive social history on every adoption finalized in PA. This information may help to answer the questions that many individuals have about their genetic predisposition to medical conditions and diseases as well as provide them with information on the circumstances surrounding their birth. This information will not only benefit the adoptee, but their families, including their descendants.

### **Access to Court or Agency Records:**

Act 101 requires that all court and licensed adoption agency records are maintained as permanent records and withheld from inspection except as provided after the effective date of this bulletin. The definitions of agency records (see page 2) includes all information collected by an agency relating to a birth family, an adoptive family and an adoptee. Act 101 changes the record retention requirement in DPW regulation (55 Pa. Code § 3350.14(e)) that previously allowed records to be destroyed 50 years from the date of placement. This means that agency records must now be maintained indefinitely in their entirety.

The definition of court record (see page 2) includes all petitions, exhibits, reports, notes of testimony, decrees and other papers pertaining to a proceeding under this chapter or former statutes relating to adoption.

Act 101 authorizes access to the court or agency records to the following entities solely for the purpose of releasing non-identifying or identifying information:

- The court which finalized the adoption;
- The agency that coordinated the adoption; or
- A successor agency authorized by the court which finalized the adoption.

### **Documentation in Agency Records:**

Licensed adoption agencies shall maintain centrally located documentation to track requests for identifying and non-identifying information. The agency may maintain the documentation however it chooses, as long as it is centrally located. Information the agency must maintain includes the following:

- Name of adoptee;
- Date of request;
- Type of information requested (identifying or non-identifying);
- Date the Agency acknowledged the request (30 days); and
- Date the Agency responded to the request (120 days).

The adoption agency shall maintain full documentation in the adoptee's case record regarding information requests and the authorized representative's activities in response to each request. During the annual licensing inspection process, the OCYF Regional Offices will ensure that licensed adoption agencies comply with the requirements contained in Act 101 of 2010.

### **Disposition of Agency Records upon Closure:**

Any licensed adoption agency intending to cease operation as a legal entity must notify DPW. Written notice to OCYF is not required if the adoption agency is closing but has applied to operate as a new legal entity. The agency's required written correspondence shall be directed as soon as possible, but not less than 30 days prior to closure, to the appropriate OCYF regional office that performs the annual licensing of the legal entity.

Within this same 30 days, the agency shall submit a written plan to OCYF regarding the closure and the transfer of the physical adoption records to another agency licensed by DPW. This plan shall be subject to approval by OCYF and must include, at a minimum, the following information:

- The name, address and contact information of the agency where the physical adoption case records will be transferred and stored;
- The plan for ongoing case record storage and maintenance; and
- The details of how the transfer of records to another agency will be managed.

In preparation for the closure and the transfer of case records, the agency shall label all physical adoption case records maintained since the agency's inception. It is required that agencies identify the name of the court that finalized an adoption or where a petition to TPR or a petition to adopt was filed.

OCYF is required to notify the court identified by the closing agency of the name, address and telephone number of the agency to which the physical case records have been transferred. DPW developed a standardized notification to communicate this information to the courts (see Appendix N – Notification Letter from DPW to Courts). OCYF will maintain a master list of adoption agency closures and the agencies to which the case records were transferred.

This bulletin provides recommended best practice for identifying case records in order for the receiving agency to manage the incoming adoption case records. Case records should be easy to locate and identify in the event that an inquiry is made for information. The closing agency should provide to the receiving agency an electronic document that is a master list identifying each adoption record. Agencies may use a standard naming convention for labeling case records that includes the following information:

- The county two-digit code;
- The county's adoption decree's unique number;
- The child's birth initials;
- The name of the adoptive family;
- The adoption agency license number; and
- A unique identification number that is a sequential number assigned by the agency based on the number of records.

An example of the standard naming convention for a fictitious record in Adams County is: 01\_(adoption decree number or finalization date)\_MJS\_Martin\_11136\_1001.

### **Attorney Records:**

An attorney representing a party to an adoption proceeding or acting as counsel or GAL for a child in a proceeding may forward records and information relating to the child, the child's birth family and the adoptive family to the court which finalized the adoption, as established by general rule by the Supreme Court. Attorney records and information shall be treated as court records.

### **Fees:**

Act 101 allows any court or agency the option to develop a fee structure and to charge reasonable fees for the services provided regarding the release of both non-identifying and identifying information. The release of non-identifying information, identifying information or requests for contact will commence on the date the fee is received by the court or agency. Agencies are encouraged to respond to requestors well before the required timeframe in order to avoid undue delays and to facilitate the process of obtaining information and/or contact.

### **Immunity from Liability:**

A person or agency, including the Commonwealth and any of its governmental subdivisions, that participates in good faith in providing services as required by Act 101 of 2010 has immunity from civil liability that may otherwise result by reason of an action or failure to act. The good faith of any person or agency that provides services is presumed for the purpose of a civil proceeding.

## **Access to Information**

### **Request for Information or Contact:**

Act 101 of 2010 allows the following individuals to file a written request with the court which finalized the adoption, the agency which coordinated the adoption, or the successor agency for identifying or non-identifying information or contact:

- An adoptee at least 18;
- An adoptive parent of adoptee who is under 18, or adjudicated incapacitated and is 18 or older, or who is deceased;
- A legal guardian of adoptee who is under 18 or adjudicated incapacitated;
- A descendant of a deceased adoptee;
- A birth parent of an adoptee 21 or older;
- A parent of a birth parent of an adoptee 21 or older if the birth parent consents, is incapacitated or is deceased;
- A birth sibling of an adoptee if both are 21 or older and meet the following criteria:
  - The birth sibling remained in the custody of a birth parent and that birth parent consents, is deceased or is incapacitated;
  - The birth sibling and the adoptee were both adopted out of the same birth family; or
  - The birth sibling was not adopted out of the birth family and did not remain in the custody of the birth parent.

See Appendix K - Court and Agency Request for Adoption Information (Non-identifying or Identifying) or Contact with Specific Individuals Form.

### **Who may be a Subject of a Request for Information:**

The individuals listed above may file a written request for information or contact with the following individuals:

- An adoptee 21 or older;
- A birth parent of adoptee;
- A parent of the birth parent of an adoptee who is 21 or older if the birth parent consents, is incapacitated or is deceased;
- A birth sibling of an adoptee if both the sibling and adoptee are 21 or older and the following criteria exist:
  - The birth sibling remained in custody of the birth parent and the birth parent consents to the release of the information or contact, is deceased or incapacitated;
  - The birth sibling and the adoptee were both adopted out of the same birth family; or
  - The birth sibling was not adopted out of the birth family and did not remain in the custody of the birth parent.

See Appendix K - Court and Agency Request for Adoption Information (Non-identifying or Identifying) or Contact with Specified Persons.

### **Requests for Non-identifying Information:**

Non-identifying information does not reveal the identity of an individual. The term includes, but is not limited to, the following types of information:

- The date, time and location of the adoptee's birth;
- The adoptee's birth weight and other physical characteristics;
- Where the birth parents of the adoptee were born;
- The age of the birth parents when the adoptee was born;
- The marital status of the birth parents when the adoptee was born;
- The facts and circumstances relating to the nature and cause of the adoption;
- The nationality, ethnic background, race, tribal affiliation and religious preference of the birth parents of the adoptee;
- The educational level, course of study, general occupation, talents and hobbies of the birth parents of the adoptee;
- A general physical description of the birth parents and other birth relatives of the adoptee, including height, weight, color of hair, color of eyes, complexion and other similar information;
- Whether a birth parent of the adoptee had other children and, if so, available non-identifying information about these children;
- Information regarding the birth grandparents of the adoptee;
- The name of the agency involved in the adoption;
- The length of time the adoptee was in the custody of an adoptive parent;
- Whether the adoptee was ever placed in foster care and, if so, the number of foster care placements, the beginning and end dates of each foster care placement and anything significant that occurred in each foster care placement; and
- Available health history of the adoptee and birth relatives of the adoptee, including psychological and psychiatric information which may have an effect on the mental or physical health of the adoptee.

Act 101 of 2010 allows the court or agency to charge reasonable fees for non-identifying information (see Appendix M - Sample Response Letters from the Courts and Agencies to Requests for Information). The court or agency must notify the requestor within 30 days of the receipt of the request for information. This request must include the required fee, if applicable. The court or agency will redact any identifying information such as the name, aliases, address or former addresses prior to the release of any information on file.

The court or agency shall, within 120 days, review its records and furnish to the requestor any information concerning the adoption that will not compromise the confidentiality of the relationship between the adoptee and the adoptee's birth parent (see Appendix M - Sample Response Letters from the Courts and Agencies to Requests for Information).

The OCYF regional offices will ensure that licensed adoption agencies have completed the requirements for handling the requests for non-identifying information during the annual licensing inspection process. Documentation in agency case records will be required to determine that the requirements were met within the specified time frames required.

### **Requests for Identifying Information:**

Act 101 of 2010 allows the court or agency to charge reasonable fees for identifying information (see Appendix K - Court and Agency Request for Adoption Information (Non-identifying or Identifying) or Contact with Specified Persons and Appendix M - Sample Response Letters from the Courts and Agencies to Requests for Information).

Any court or agency has the option to develop a fee structure. After the request and the fee are received, the court or agency will, within 120 days, do all of the following:

- Determine whether it has in its possession any records relating to the adoptee;
- Conduct a good faith search for identifying information by an authorized representative appointed by one of the following:
  - The court in which the adoption was finalized;
  - The agency that coordinated the adoption;
  - A successor, by merger or acquisition, of the agency that coordinated the adoption; or
  - If neither the agency nor successor exists, by an agency authorized by the court.

The OCYF regional offices will ensure that licensed adoption agencies have completed the requirements for handling the requests for identifying information during the annual licensing inspection process. Documentation in agency case records will be required to determine that the requirements were met within the specified time frames required.

### **Authorized Representative:**

An authorized representative is an individual appointed to conduct a search and who has completed a standardized training program as required by DPW. DPW will develop standardized training for authorized representatives and provide training opportunities.

The authorized representative appointed by the court or agency shall ensure when conducting a search that no individual other than a birth parent is informed of the adoptee's existence and relationship to birth parent. DPW intends that each court and agency shall appoint one or more individuals as authorized representatives to carry out the requirements of Act 101 of 2010. Courts and agencies may contract with an authorized representative if the individual who is appointed is not an existing staff member. For instance, if a rural agency or court does not have an expert on the staff to fulfill the responsibilities required of the authorized representative, they may pursue a contract for these services.

County agencies may use casework staff, which could include the paralegal positions, to conduct diligent searches to support the work required of the authorized representatives. However, paralegals may not be assigned as authorized representatives. The duties and responsibilities of the authorized representatives are intended to be handled by individuals who are experienced in providing adoption services.

The authorized representative shall review the court and agency record for identifying information regarding the birth or adoptive family and shall determine whether an authorization form has been filed with the court or agency. The authorized representative shall do the following:

- Notify any other court or agency listed in its records of the existence of the request for identifying information;
- Ask any other court or agency listed in its records to advise if an authorization form has been filed;
- Contact the PAIR to advise of the request for identifying information and ask whether an authorization form has been filed with the registry (see page 14 of this Bulletin for the process used by PAIR); and
- Notify the requesting individual of its findings.

**Authorization Form:**

Courts or agencies may adapt the following Appendices to design their own forms to implement Act 101 of 2010:

- Appendix I - Court and Agency Birth Parent Authorization to Release Information and Request Contact Form;
- Appendix J - Court and Agency Adoptee Authorization to Release Information and Request Contact Form; and
- Appendix L - Court and Agency Withdrawal of Authorization to Release Information and Contact Request Form.

If an applicable authorization form is not located, all of the following apply:

- The authorized representative shall use reasonable efforts to locate the subject of the search. The search process may include, but is not limited to, the following, as reasonable and necessary:
  - i. A review of records for background information on birth family or adoptive family, including last known address, names of family members, Social Security numbers, occupations, addresses of employment, military services, names of schools attended, and dates and places of marriages and deaths;
  - ii. A review of the Diligent Search packet available at <http://www.diakon-swan.org> for a step by step process and resources available for use when looking for individuals;
  - iii. A search of public databases; and
  - iv. A review of any available county records, including those held by the voter's registration offices the recorder of deeds, the register of wills and the marriage license bureau.

- If the subject of the search is located, the authorized representative shall obtain written authorization from the subject before any identifying information is released or contact between the parties is made;
- If the requester is an adoptee seeking the identity of a birth parent, the identity of a deceased birth parent may be disclosed; and
- If the requester is an adoptee seeking the identity of both birth parents and only one birth parent agrees to the disclosure, only the information relating to that birth parent shall be disclosed.

An individual may withdraw their authorization form at any time by completing Appendix L - Court and Agency Withdrawal of Authorization to Release Information and Contact Request Form filed with the court or agency where the authorization to release information was previously filed.

### **Medical and Social History Information:**

The following places are the locations where a statement regarding medical and social history information may be filed:

- The court that terminated parental rights;
- The court that finalized the adoption;
- The agency that coordinated the adoption; or
- The PAIR.

If a statement regarding medical and social history information is filed in the court that terminated the parental rights, a copy of the statement shall be forwarded to the court that finalized the adoption and the PAIR. Courts may submit the information in a Portable Document Format (PDF) to the PAIR at [www.pagov-pair.org](http://www.pagov-pair.org).

In order to reduce a duplication of efforts and the receipt of the same information from various agencies and the courts, it is suggested that the courts and the agencies develop a collaborative process to determine who will be responsible for forwarding information to the PAIR. The court may request the county agency or private provider to upload information to the PAIR on their behalf.

The PAIR will provide written acknowledgement of the receipt of all information received to the submitter of the information within 30 calendar days.

The OCYF regional offices will ensure that licensed adoption agencies have completed the requirements for handling the requests for medical and social history information during the annual licensing inspection process. Documentation in agency case records will be required to determine that the requirements were met within the specified time frames required. Agencies should maintain the acknowledgement from PAIR in the child's record as verification that the information was submitted as required. If a county agency delegates to a SWAN affiliate agency or private provider the responsibility to upload the information to PAIR, the provider agency should provide a copy of the acknowledgement from PAIR of receipt of this information to the county agency as verification that the information was provided.

**Individuals Authorized to File, Update and Request Medical and Social History Information:**

The following individuals may file, update and request a statement regarding medical and social history information at any time:

- An adoptee who is 18 or older;
- An adoptive parent or legal guardian of an adoptee who is under 18 or adjudicated incapacitated;
- A descendant of a deceased adoptee;
- A birth parent;
- A legal guardian of an adjudicated incapacitated birth parent; or
- A survivor of a deceased birth parent.

**Notification:**

Within 30 days of filing of a statement regarding medical and social history information, the court, agency or PAIR shall give notice of its receipt to the individual who filed the statement.

Within 120 days after a statement is filed, the court, agency or PAIR shall give notice of the filing to the individual who is at least age 21 and who the information is intended to benefit, if known or identified in its records.

**Request for Information:**

When the court or agency receives a written request for medical and social history information and the required reasonable fee from the requester, it shall notify the requester within 120 days whether it possesses any medical and social history information relating to the adoption. Within 120 days of locating medical and social history information, the court or agency shall do the following:

- For non-identifying information, review and furnish to the requester any medical & social history information that will not compromise the confidentiality of the relationship between the adoptee and the adoptee's birth parent; and
- For identifying information, if an authorization form is on file with the court, agency or PAIR, furnish to the requester the available identifying information in its records.

**No Information or Authorization Form on File:**

If a court or agency receives a request for medical and social history information and the required reasonable fee from the requester and finds that no such information is in its records or that no authorization form is on file, the court or agency shall contact the subject of the request and ask that the subject do the following:

- Provide non-identifying information for the benefit of the requester; and
- File an authorization form.

If the subject of the request cannot be located from the information contained in the court records, the court or agency will appoint an authorized representative to use reasonable efforts to locate the subject. Reasonable fees may be charged by courts and agencies for search activities.

If non-identifying information is provided by the subject of the request, the court or agency shall provide the non-identifying information to the requester. If an authorization form is filed, identifying information may also be provided.

**Deceased Birth Parent:**

Any information on file regarding the deceased birth parent may be disclosed if the requester is an adoptee seeking information about a birth parent.

**Confidentiality:**

In conducting a search, the court or agency shall ensure that no individual, other than a birth parent, is informed of the adoptee's existence and relationship to the birth parent of the adoptee.

An inquiry is not mandatory if an authorized representative of the court or agency conducting a search reasonably believes an inquiry may compromise the confidentiality relating to the relationship between the adoptee and a birth parent of the adoptee.

**Refusal to Search:**

The agency may decline to conduct a search to determine whether an individual will authorize the disclosure of identifying information or contact if the agency is satisfied that a request could cause physical or emotional harm to the requesting individual or others.

An agency may also decline to commence or conduct a search if the requester fails to pay the reasonable costs associated with commencing or conducting the search. An agency that declines to conduct a search shall refer the request to the court that finalized the adoption and inform the court of its reasons for declining the search request. The agency shall notify the requester of the referral and identify the court to which the referral was made.

If a court is satisfied that a request could cause physical or emotional harm to the requesting individual or others, the court receiving a request for identifying information or contact may decline to perform a search. A court that declines to conduct a search shall inform the requesting individual of its decision in writing and of the procedures for appeal of that decision.

The OCYF regional offices will ensure that licensed adoption agencies have completed the requirements for handling the refusal to search during the annual licensing inspection process. Documentation in agency case records will be required to determine that the requirements were met within the specified time frames required.

**Original Birth Record:**

No disclosure of information shall be made by a court, agency, the Department of Health (DOH) or any other Commonwealth agency regarding an adoptee's original birth record or regarding the documents or proof on which an amended certificate of birth is based or relating in any way to the birth parents unless the disclosure is made pursuant to the provisions of this section.

**Filing of Consent to Issue a Copy of Summary Original Birth Record:**

See Appendix O - Department of Health Forms.

The birth parents may, at the time their parental rights are terminated or at any time thereafter, place on file with the court and the DOH a consent form granting permission for the court or the DOH to issue a copy of the summary of the adoptee's original birth record, which summary discloses the identity of the birth parents, at any time after the adoptee turns 18 or, if less than 18, to the adoptive parent or legal guardian. If only one birth parent has filed a consent form, a copy of the summary of the original birth record naming only the consenting birth parent shall be issued.

The consent of a birth parent may be withdrawn at any time by filing a withdrawal of consent form with the court and DOH.

Courts have their own local processes in place by which they manage the birth parent's consent to grant permission to release a summary of the adoptee's original birth records as well as the withdrawal of this consent.

Birth parents should file their consent and withdrawal of consent separately with both the DOH and the local court.

Appendices

Appendix A - Notification Letter

Appendix B - Voluntary Post-Adoption Contact Agreement

Appendix C - Voluntary Post-Adoption Contact Agreement instruction sheet

Appendix D - Act 101 Registration Form

Appendix E - Request for Adoption Information Form

Appendix F - Adoptee Authorization to Release Information and Registration Form

Appendix G - Birth Parent Authorization to Release Information and Registration Form

Appendix H - Withdrawal of Authorization to Release Information Form

Appendix I - Court and Agency Birth Parent Authorization to Release Information and Request Contact Form

Appendix J – Court and Agency Adoptee Authorization to Release Information and Request Contact Form

Appendix K – Court and Agency Request for Adoption Information (Non-identifying or Identifying)

Appendix L – Court and Agency Withdrawal of Authorization to Release Information and Contact Request Form

Appendix M – Sample Response Letters from the Courts and Agencies to Requests for Information

Appendix N – Notification Letter from DPW to Courts

Appendix O – Department of Health Forms

Example Agreement

Child/Youth Brochure