



**New York State
Foster Parent's
Guide to
Adoption**

January 2007



Introduction

In New York State, many of the children in foster care who have a goal of adoption are adopted by their foster parent(s). As such, foster parents play a major role in providing safe, permanent homes for children in foster care. This guide was written to assist the adoption process for these children so that they are able to live in permanent, stable homes. The more adoptions of available foster children by foster parents, the fewer children who are uncertain about their future. For those foster parents who are considering adopting the children in their care, this guide is offered as a source of information and assistance.

This edition of the guide reflects changes in regulations, policies, and practices that resulted from passage of the federal Adoption and Safe Families Act of 1997 (ASFA) and Chapter 3 of the Laws of 2005 (Governor's Permanency Bill) in New York State. Many of these changes are expected to decrease the length of time that children spend in foster care and to speed up the process for adopting children in foster care.

January 2007

The *New York State Foster Parent's Guide to Adoption* was edited and designed by Welfare Research, Inc. (WRI) under contract to the New York State Office of Children and Family Services. WRI is a nonprofit agency located at 112 State Street, Albany, NY 12207; (518) 432-2563; www.welfaresearch.org.

How to Use This Guide

We are pleased to present the *New York State Foster Parent's Guide to Adoption*, which is designed to help foster parents understand the adoption process and take an active role in the adoption of their foster children.

There are two easy ways to use this guide without reading it from cover to cover.

1. Find the topic you want to read about in the *Table of Contents* on page vii.
2. Find the word or phrase you want explained in the *Index of Key Words and Phrases* on page 31.

If you are a foster parent and you are thinking about adopting your foster child, you can consult this guide for information on the steps you will need to take. Beginning on page iii is a summary of the adoption process as described in this guide. The summary should give you a good idea of what to expect if you make the decision to adopt your foster child. Chapters One through Six provide information on the adoption process. This is followed by a list of useful telephone numbers and websites, an index of key words and phrases (printed in bold type throughout the text), and a form to help you keep track of your adoption.

We hope you will find this guide helpful in making the adoption of your foster child a positive experience. The more you know about the process and the requirements, the more likely the adoption will take place in a timely fashion. This will benefit everyone involved, particularly the child.

The Authors

Lisa C. Marsh, Esq., and Calvin Roberts, CSW, formerly of the Center for Development of Human Services, New York State Office of Children and Family Services (New York City Regional Office)

Revised with assistance from Christine Theodore, Esq., Adoption Specialist, Center for Development of Human Services, New York State Office of Children and Family Services (New York City Regional Office)



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Summary

Adoption is a method provided by law that creates the legal relationship of parent and child. After an adoption is finalized, the adoptive parent and the adopted child have all the rights and responsibilities in connection with each other that any birth family has.

Foster children are in the legal custody of a commissioner of a social services district. The social services district may give responsibility for the care of the child to a voluntary authorized agency.

When a child is in foster care, decisions must be made regarding the long-range permanency plan for the child. If the social services district decides that it would not be in the child's best interests to return home and that the child should be adopted, steps must be taken to legally free the child for adoption.

There are three ways a child can become **legally free for adoption**: 1) the birth parents can sign a voluntary surrender agreement; 2) the social services district responsible for the child can bring a case in court asking the judge to terminate the parental rights of the birth parents; or 3) if both birth parents are deceased, or one parent is deceased and there is no other parent whose consent to the adoption is required, the child is automatically free for adoption.

The current foster parents can ask the court to permit the filing of a petition to terminate the parental rights of the birth parents.

During the process of legally freeing your child for adoption, you can begin the adoption process. The adoption process involves two major procedures. First, you and your home will need to be approved by the social services district or agency as an adoptive home. Second, you must start a court proceeding asking a judge to **finalize** (complete) the adoption to make it legal.

The Agency Approval Process

To be approved by the social services district or a voluntary authorized agency, you will need to cooperate with the adoption home study and sign an Adoptive Placement Agreement. Also, unless you and any other person over the age of 18 residing in your home were previously fingerprinted as part of the foster home approval or certification process, you and any such person will have to be fingerprinted and go through the **criminal history record review process**. For foster parents who are adopting, the **adoption home study** focuses on areas that need updating and any additional information the court will need. The adoption home study, which is usually conducted by someone from the social services district or the agency, provides information about the foster parent, the foster parent's home, and any other information that will probably affect how the child is cared for after the

adoption. The information is used by the social services district, the agency, and the court to learn about the adoptive family and to determine whether adoption by the foster parents will be in the child's best interests.

The **Adoptive Placement Agreement (APA)** is a form signed by the foster parent and the social services district or the agency. By signing the APA, the foster parent agrees to take care of the child and to meet the child's needs with the intention of adopting, and the agency agrees to carry out its duties concerning the welfare of the child.

Information You Should Receive

The social services district or the agency must give you any available medical history of your foster child and your foster child's birth parents before you adopt. The history must include psychological information and information about conditions or diseases believed to be hereditary; drugs or medication taken during pregnancy by the child's birth mother; immunizations; medications; allergies; diagnostic tests and their results; and any follow-up treatment given or still needed by the child.

Adoption Subsidy

An **adoption subsidy** is a monthly payment made to adoptive parents who have adopted a child who is considered handicapped or hard to place. In general, a **handicapped child** is a child who has a physical, mental, or emotional condition or disability that is so severe it would make it difficult for the child to be adopted. A **hard-to-place child** is a child who is not handicapped who has either been waiting to be adopted for a specific amount of time or is considered difficult to adopt because of certain factors. A subsidy is paid at one of three rates: **basic**, **special**, or **exceptional**. These rates are related to the foster care board payment rates.

If you are adopting a child who is handicapped or hard to place, you might also be reimbursed for nonrecurring adoption expenses up to \$2,000

for each child being adopted. A **nonrecurring adoption expense** is a onetime payment of money that is directly related to and necessary for the adoption of a foster child. These payments include lawyer fees, medical examinations, marriage certificates, and travel. These expenses are reimbursed only *after* the child is adopted. If the adoption is not finalized, the expenses will not be reimbursed.

This guide explains the steps for applying for an adoption subsidy and reimbursement of nonrecurring adoption expenses. Your caseworker should also give you detailed information.

Finalizing the Adoption

To have your adoption finalized, your lawyer and the social services district and/or the agency will have to submit documents and information to court, and you will have to petition the court to finalize your adoption.

The first step in the court finalization process is to hire a **lawyer (attorney)**. A lack of money should not prevent you from hiring a lawyer to handle your adoption. It is true that you are responsible for ensuring that the lawyer is paid for his or her services. Some lawyers, however, are willing to work out a payment arrangement with foster parents. This is especially true if the foster parent will be entitled to reimbursement of nonrecurring adoption expenses. Your caseworker may be able to help you make arrangements to have your reimbursement for nonrecurring adoption expenses paid directly to your lawyer if your lawyer agrees to this. If this is done, you will not have to pay your lawyer any money.

Your lawyer will have to submit documents to court that contain information the judge will need to finalize the adoption. These documents are often called the "**adoption packet**." The adoption packet contains information about the prospective adoptive family and child. The judge will require information about your home, how you live, who lives with you, and who spends time with the child.

You should be prepared to answer questions and to cooperate with your caseworker or whoever else might be conducting the home study. Other people living in your home should also be prepared to meet with the person conducting the home study and be screened by the **Statewide Central Register of Child Abuse and Maltreatment (SCR)**. Some judges also require information about anyone who spends a great deal of time in the home, such as someone who is in a significant relationship with the foster parent. In addition, information, as nearly as can be ascertained, concerning the birth parents must be provided to the court. This information includes the heritage of the parents, including nationality, ethnic background, and race; education; general physical appearance; occupation; health and medical history; and any other information that may be a factor influencing the child's future.

The following requirements apply to adoptions filed in New York State:

- ◆ If you live in New York State, you must file the adoption packet in either: the Family Court or Surrogate's Court in the county (or the borough) where you live; or the Family Court or Surrogate's Court in the county where the parental rights of your foster child's birth parents were terminated or where the surrender signed by the birth parents in court was approved.
- ◆ If you live in a state other than New York, you must file the adoption packet in either: the Family Court or Surrogate's Court where the agency has its main office; or the Family Court or Surrogate's Court in the county where the parental rights of your foster child's birth parents were terminated or where the surrender signed by the birth parents in court was approved.

Regardless of where you live, you may start the adoption finalization process early by filing the adoption petition in the court where the case terminating the parental rights of your foster child's birth parents has begun or by submitting the

adoption petition to the judge who has just finished terminating the parental rights of your foster child's birth parents or accepting the birth parents' surrender. (If you start the adoption process early and you plan to apply for an adoption subsidy, you should apply for the subsidy as soon as possible.)

As the petitioner in the case, you should keep track of the progress of the adoption by contacting your lawyer and your caseworker. You can also call the court if you need additional information. If you call the court, ask to speak with the **adoption clerk** or any other person who can tell you the status of your case. To call the court yourself, you will need to know the name of the court where the adoption has been filed. It would also be helpful to know the **docket number** of the case if it was filed in Family Court or the file number if it was filed in Surrogate's Court. A docket number is a number that certain courts give to cases to show that the case has been officially filed with that court. Docket numbers for adoption cases filed in a New York State Family Court begin with the letter "A." In Surrogate's Court, each case is assigned a **file number**. When a foster parent is adopting more than one child, each child is assigned a docket or a file number. You can use the form at the end of this guide to help you keep track of your adoption case.

After the judge has reviewed your case and has decided that you can adopt your foster child, a day will be scheduled for you and your foster child to go to court. To help your finalization go smoothly, you should arrive at court early. The judge will probably ask you questions and sign documents to make the adoption legal.

Continuing Contact with the Birth Family

Continuing contact with the birth family should be allowed if it is in the child's best interests. If the social services district or the agency believes that your child would benefit from continued contact with his or her birth family, you should



consider allowing it. It is important to realize that a termination of parental rights or a surrender by the birth parents does not necessarily terminate the rights of the child’s other relatives, and the child may ask to have contact with his or her relatives.

Working Toward a Successful Adoption

The more knowledgeable you are about the adoption process, the greater the likelihood that your adoption will be finalized in a timely fashion. It should be noted that such knowledge should be

gained at the time the child enters foster care and not just when the child has been freed for adoption.

Suggestions for a positive experience include: be clear about your decision to adopt; be assertive; be open; and be organized. Tips for success include: communicate effectively; build strengths and meet needs; work in partnership; build connections; build self-esteem; assure health and safety; and make an informed decision.

If you want or need help developing these skills and attitudes, you should talk with your caseworker and seek out any other available resources.

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Table of Contents

Introduction Inside Front Cover
 How to Use This Guide..... i
 Summary.....iii

Chapter One: What Is Adoption?

How Foster Children Become Free for Adoption 1
 How a Child Enters Foster Care 1
 Care and Custody of Children in Foster Care 1
 Where a Foster Child Lives 2
 Deciding that the Child Can Be Adopted 2
 Freeing the Child for Adoption 2
 Finding an Adoptive Home 3
 Photolisting 3
 Declaration of Interest in Adopting 4
 Foster Parent Preference in Adopting 4
 Starting the Adoption Process Early 4

Chapter Two: The Agency Approval Process

Cooperating with the Adoption Home Study Process..... 5
 Fingerprinting..... 6
 Completing an Adoptive Placement Agreement 6
 Information You Should Receive from the Agency..... 7
 Medical History Information 7

Chapter Three: Adoption Subsidy

The Adoption Subsidy..... 9
 What Is an Adoption Subsidy? 9
 Adoption Subsidy Is Paid Until the Child Is 21 9
 Eligibility for Adoption Subsidy 9
 The Amount of the Adoption Subsidy 11
 Reimbursement of Nonrecurring Adoption Expenses 12
 What Are Nonrecurring Adoption Expenses? 12
 Eligibility for Reimbursement of Nonrecurring Adoption Expenses..... 12
 Expenses Reimbursable Only After the Child Is Adopted 12
 Limit on Reimbursement..... 13
 Reimbursement of Lawyer’s Fees..... 13

Applying for Adoption Subsidy and Reimbursement of Nonrecurring Adoption Expenses.....	13
Adoption Subsidy.....	13
Reimbursement of Nonrecurring Adoption Expenses	14
Adoption Subsidy and Nonrecurring Adoption Expenses Agreements.....	14
Applying for Adoption Subsidy After the Adoption Is Finalized.....	14
Requesting a Fair Hearing After an Application Has Been Denied.....	15
If Adoption Subsidy Payments Stop.....	15
Chapter Four: Finalizing the Adoption	
Hiring a Lawyer	17
When to Contact a Lawyer.....	18
Choosing a Lawyer.....	18
Paying Your Lawyer.....	18
If the Lawyer Does Extra Work.....	18
Putting Together the Adoption Packet.....	19
Information Required by the Court.....	19
Collecting Documents for the Court	20
Sending the Adoption Packet to Court.....	21
Cooperating with the Agency	21
Keeping Track of the Adoption Case	21
Contacting Your Lawyer	22
Contacting the Social Services District or the Voluntary Authorized Agency	22
Contacting the Court	22
Docket Number	22
Going to Court on Finalization Day.....	22
Denial of an Order of Adoption	22
Chapter Five: Working Toward a Successful Adoption	
Suggestions for a Positive Experience	23
Twelve Tips to Success.....	24
Getting More Information and Help	24
Chapter Six: After the Adoption	
Continuing Contact Between Child and Birth Family	25
Conditional Surrender.....	25
Post-Adoption Contact Agreements.....	26
Informal Arrangements	26
Open Adoption	26
Continuing Contact with Sisters, Brothers, and Grandparents	26
Obtaining a Birth Certificate and Social Security Number	27
Post-Adoption Services.....	28
Where to Go for Answers	29
Index of Key Words and Phrases	31
Keeping Track of Your Adoption	Inside Back Cover

What is Adoption?

Adoption is a method provided by law that creates the legal relationship of parent and child. After an adoption is finalized, the adoptive parent assumes all the rights and responsibilities for the child that the birth parent would have. Also, the adopted child has the same rights and responsibilities as would any child born to the adoptive parents.

The adoption process involves two major procedures. First, the foster parent who wants to adopt his or her foster child must go through the agency approval process. Next, the person must start a court proceeding asking a judge to **finalize**—that is, complete—the adoption to make it legal.

Steps in the Adoption Process

To adopt your foster child you must take these steps:

1. Be approved by the social services district or the voluntary agency as the child's adoptive parent.
2. Petition the court to have the adoption finalized.

How Foster Children Become Free for Adoption

A foster child who is available for adoption is said to be **legally free for adoption**. Before a child becomes legally free for adoption, several stages usually occur.

How a Child Enters Foster Care

A child can enter foster care in two ways:

1. The child's parent or person who cares for the child can voluntarily place the child in foster care.
2. A Family Court judge can order that the child be removed from his or her home and placed in foster care. Such an order by a Family Court judge is usually made to keep an abused and/or neglected child safe (child protective proceedings); or because the child is having problems with the law (juvenile delinquency proceedings); or because the child needs more supervision (proceedings concerning whether a person is in need of supervision—PINS).

Care and Custody of Children in Foster Care

Foster children are in the legal **custody** of a commissioner of a social services district. This means that the social services commissioner for the district has legal responsibility for the child. With the exception of the five counties (or boroughs)

of New York City, each county in New York State is a social services district. New York City is a social services district that is made up of the five boroughs. (The New York City **Administration for Children's Services (ACS)** is responsible for providing foster care services in New York City.) After a child enters foster care, the social services district can give responsibility for the day-to-day care of the child to its own foster care unit or to a voluntary authorized agency.

The **New York State Office of Children and Family Services (OCFS)** supervises social services districts and voluntary authorized agencies to require that these districts and agencies provide the proper services. OCFS does this by establishing rules and standards for practices concerning the care of children in New York State. These rules and standards are written in the form of regulations and other official documents.

Where a Foster Child Lives

After a child enters foster care, the child might be placed in a foster family boarding home or a group setting.

A child placed in a foster family boarding home lives in the home of a person who has been certified or approved by a social services district or a voluntary authorized agency to be a foster parent. If the foster parent is a relative of the child, the child is said to be in **kinship foster care**.

Some foster children, most of whom are in older age groups, live in group homes or facilities with a large number of other children. These homes are staffed by social services or voluntary authorized agency employees.

Deciding that the Child Can Be Adopted

When a child is in foster care, decisions must be made regarding the long-range permanency plan for the child. If the social services district decides that it would not be in the child's best interests to return home, another plan must be made for

the child. This other permanency plan might be adoption.

At a **permanency hearing** (see next page), one possible outcome is that a child's permanency goal is changed to adoption. Once the permanency goal is adoption, the social services district has to take the necessary steps to free the child for adoption.

The child's current foster parents will receive **notice** of every permanency hearing as well as the **permanency hearing report**. Foster parents should make every attempt to attend permanency hearings as part of their involvement in the child's life. Moreover, the foster parent has the right to an opportunity to be heard at the permanency hearing and if the child has been in the home of the foster parent for more than 12 months is a party to the proceedings. A notice of permanency hearing must also be mailed to former foster parents with whom the child lived continuously for 12 months.

Freeing the Child for Adoption

If the social services district decides that the foster child should be adopted, steps must be taken to legally free the child for adoption.

There are three ways a child can become **legally free for adoption**:

1. The birth parents can sign a voluntary surrender, giving up all rights and responsibilities to the child.
2. The social services district can bring a case in court asking the judge to terminate the parental rights of the birth parents.

A current foster parent may ask the court to grant permission to file a termination of parental rights (TPR) petition. Upon determining that grounds for termination of parental rights exist, the court may direct the local social services district to begin a proceeding to legally free the child for adoption.

If the agency fails to begin the proceeding within 90 days of the order, the *court must permit the foster parents in whose home the child lives to*

begin such a proceeding unless the social services district obtains a modification or extension of the order, or unless the court has “reasonable cause” to believe the foster parents would not be approved to adopt the child in a subsequent adoption proceeding.

3. The child is automatically legally free for adoption if both parents are deceased, or if one parent is deceased and there is no other parent whose consent to the adoption is required.

After a child is legally free for adoption, and sometimes before, the foster parent can begin the adoption process. (See page 4, *Starting the Adoption Process Early*, for information concerning how to start the adoption process before a child is legally free for adoption.)

Finding an Adoptive Home

Photolisting

Photolisting is a service performed by the New York State Office of Children and Family Services (OCFS) that was established to find adoptive families for children who are legally freed

for adoption, have been in foster care for three months or more, and who have not been placed for adoption. As part of the photolisting process, social services districts and agencies are required to send a photograph and brief description to OCFS of children who should be photolisted. Photolisting of a child may be waived or delayed under certain limited circumstances that are described in New York State regulations. OCFS regularly publishes the photographs and descriptions of children who must be photolisted in a set of books called The Adoption Album. Some of the children listed in The Adoption Album books are also listed on the OCFS website. The Adoption Album books are distributed to OCFS regional offices, foster care and adoption agencies, local social services districts, public libraries, and other institutions accessible to the public. Individuals can look through The Adoption Album and contact the agency identified in the Album or OCFS if they see a child they might want to adopt. (See page 29 for OCFS telephone numbers and the website address.)

Permanency Hearing

A hearing held for the purpose of reviewing the foster care status of the child and the appropriateness of the permanency plan developed by the social services district. The standards for permanency hearings for abused or neglected children, children voluntarily placed in foster care, and completely freed foster children are set forth in Article 10-A of the Family Court Act. The initial permanency hearing for a non-completely freed abused, neglected, or voluntarily placed child must begin no later than eight months after removal, and the subsequent permanency hearing must begin no later than six months following the previous permanency hearing. Both must be completed within 30 days after they began. For a foster child who is placed as a PINS (person in need of supervision) or JD (juvenile delinquent), the initial permanency hearing will be held within 12 months of the date the child is considered to have entered foster care and every 12 months from the previous permanency hearing. When a child is completely freed for adoption at a court hearing, the initial freed child permanency hearing must begin within 30 days of the court hearing unless the court determines that it should be held immediately upon completion of the hearing at which the child was freed, provided adequate notice has been given. (FCA § 1089)

Declaration of Interest in Adopting

If a legally free child is living with a foster parent who is interested in adopting the child, the social services district or the agency can ask the parent to sign a **Declaration of Interest in Adopting**. This declaration is written confirmation that the foster parent is interested in adopting the child. After the Declaration of Interest in Adopting is signed, the agency must not refer the child for photolisting.

Foster Parent Preference in Adopting

If a legally free child has lived with a foster parent for twelve continuous months or more, the social services district or the agency must give that foster parent's request to adopt the child preference and first consideration. This means that after a child is legally free for adoption, the foster parent who has cared for the child for at least twelve months without interruption can ask the social services district or agency for permission to adopt the child. The district or the agency must take the foster parent's request to adopt into account before it considers allowing any other family to adopt the child. This foster parent preference, however, is not a guarantee that the foster parent will be able to adopt the child. The agency is still required to make sure that adoption by the foster parent is in the child's best interests.

Starting the Adoption Process Early

Many people refer to starting the adoption process early as "**Chapter 588**" because the steps, or procedures, became law in New York State as part of Chapter 588 of the Laws of 1991.

There are several steps you can take to start the adoption process early:

1. Apply for an adoption subsidy before your foster child is legally free for adoption. Speak to your social services district or agency caseworker about this when the two of you discuss adoption. Applying for an adoption subsidy early helps to avoid delays in the adoption process. (See Chapter Three for information about adoption subsidy.)
2. File an adoption petition in court while the termination of parental rights hearing is occurring, *or* submit an adoption petition in court immediately after the termination of parental rights hearing or surrender of parental rights by the birth parent. (See Chapter Four for information about the court.)

If you decide to submit an adoption petition to court early, be aware that there is always the possibility that the judge will not terminate parental rights or that the birth parent might not surrender the child. If you hire a lawyer and pay his or her fee, you will not be reimbursed for this fee as a nonrecurring adoption expense if you do not adopt the child.

It is also advisable to discuss the early filing of the adoption with your caseworker to make sure that the early filing is a good idea in your case. You will have to work closely with the social services district or the agency to make the early filing a success.

The Agency Approval Process

When you decide that you want to adopt your foster child, you will have many contacts with the social services district or the agency until the adoption is finalized. These contacts include going through the adoption home study process, completing the Adoptive Placement Agreement, and exchanging important information.

Steps in the Agency Approval Process

To be approved by the social services district or the voluntary authorized agency as an adoptive parent, you will need to complete the following steps:

1. Cooperate with the adoption home study process.
2. Complete the Adoptive Placement Agreement.

Cooperating with the Adoption Home Study Process

For foster parents who are adopting, the **adoption home study** focuses on areas of the family's home study that need updating and any additional information the court will need. The adoption home study, which is usually conducted by someone from the social services district or the agency, provides information about the foster parent, the foster parent's home, and any other information that will probably affect how the child is cared for after the adoption.

The adoption home study serves two purposes:

- ◆ The social services district or the agency uses the home study process to gather and record information that it can use to determine whether the foster parents will be appropriate adoptive parents for the child.
- ◆ The court uses the home study report to learn about the adoptive family and to determine whether adoption by the foster parents will be in the child's best interests.

The social services district or the agency usually submits its home study report to the court. The home study report that is submitted to court is sometimes called an **Investigation and Report (I & R)** or an **Adoption Report of Investigation (ARI)**. In some cases, however, the court might order another agency or department, such as the

Department of Probation, to conduct a home study or to do a follow-up to the home study done by the agency.

Fingerprinting

Before a person can be finally certified or approved as a foster parent or approved as an adoptive parent in New York State, that person and the other persons living in the home who are over the age of 18 must undergo **fingerprinting** through the New York State Office of Children and Family Services (OCFS) **criminal history record review process**. If you have been finally certified or approved as a foster parent in New York State, you have already been fingerprinted through the OCFS process. However, if you are not a certified or approved foster parent, or if anyone else living in your home who is over the age of 18 has not been fingerprinted through the OCFS criminal history record review process, you and they will have to complete the process before you can be approved as an adoptive parent.

If you are an applicant to be either a certified or approved foster parent or an approved adoptive parent and you have a criminal conviction for a specified felony, you are presumptively disqualified from being certified or approved. The social services district or the agency must deny your application unless you demonstrate that the denial will create an unreasonable risk of harm to the physical or emotional health of the child; and approval or certification will not place the child's safety in jeopardy and will be in the best interests of the child.

If you were convicted of any other crime, or if any other person over the age of 18 residing in your home was convicted of any crime, the social services district or the agency may deny your application. The decision whether to deny will be based on various factors, including how the crime relates to the care of children, when the conviction took place, the age of the person when the crime occurred, the seriousness of the crime, and rehabilitation and good conduct. If you have any questions or concerns about the criminal history record review process, especially if someone in your home has not been fingerprinted, you should speak with your caseworker and/or attorney.

Completing an Adoptive Placement Agreement

An **Adoptive Placement Agreement (APA)** is a form that the foster parent and a representative from the social services district or the agency must sign after the foster parent is approved to adopt a child. The APA has information about the rights and responsibilities of the person who wants to adopt the child and the rights and responsibilities of the social services district or the agency that has custody of the child. The foster parent who signs an APA agrees to take care of the child and to meet the child's needs with the intention of adopting. In turn, the agency agrees to carry out its duties concerning the welfare of the child. The APA does not, however, transfer custodial rights to the person who is planning to adopt the child. The social services district commissioner still has custody of the child.

Filling Out Forms

During the adoption process, prospective adoptive parents are usually asked to sign several forms. Before signing any form, you should review it carefully and discuss the consequences of signing the form with your caseworker. It is not advisable to sign blank forms.

Before you sign the APA, your caseworker or other agency representative from the social services district or the agency should discuss the significance of the APA with you.

Information You Should Receive from the Agency

Medical History Information

The social services district or the voluntary authorized agency must give you any available medical history, including psychological and psychiatric information, of your foster child and your foster child's birth parents before you adopt. Information kept by the court, the social services district, and the agency concerning the adoptive child is confidential. However, New York State law requires that the social services district or the voluntary authorized agency automatically give the medical history of the child and the child's birth parents to the following people:

- ◆ a person who is going to adopt a child
- ◆ a person who is going to become a child's foster parent
- ◆ a foster child when the child is discharged to his or her own care

New York State Law also requires that the social services district or the voluntary authorized agency give the medical history of the child and the child's birth parents to the following people if they ask for information:

- ◆ a person who has already adopted a child
- ◆ a person who is already the foster parent of a child
- ◆ an adopted former foster child

The medical history can be a copy of the official documents or a summary of those documents. Information identifying the birth parents must be deleted from the medical history before the history is given to a person who is going to become the child's adoptive or foster parent, a person who has already become the child's foster or adoptive parent, or a person who is an adopted

former foster child. Information identifying the birth parents is any information that can reveal the identity of the child's birth parents. Examples of identifying information are the birth parents' names, addresses, and social security numbers.

A medical history that is given according to the provisions discussed above must include, but is not limited to, the following information, where known:

- ◆ conditions or diseases believed to be hereditary
- ◆ drugs or medication taken during pregnancy by the child's birth mother
- ◆ immunizations received by the child while in foster care and before placement in care
- ◆ medication dispensed to the child while in care and before placement in care
- ◆ allergies the child has had while in foster care and before placement in care
- ◆ diagnostic tests, including developmental or psychological tests and evaluations given to the child while in care and before placement in care, and their results
- ◆ laboratory tests for HIV and their results
- ◆ any follow-up treatment given to the child while in care or before placement in care, or still needed by the child

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