



CDSS

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DEPARTMENT OF SOCIAL SERVICES

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ARNOLD SCHWARZENEGGER
GOVERNOR

July 28, 2009

ALL COUNTY LETTER NO. 09-35

TO: ALL COUNTY WELFARE DIRECTORS
CDSS ADOPTIONS DISTRICT OFFICES
LICENSED PUBLIC AND PRIVATE ADOPTION AGENCIES
ADOPTION SERVICE PROVIDERS (ASPs)
ACADEMY OF CALIFORNIA ADOPTION LAWYERS

SUBJECT: WAIVER OF RIGHT TO FURTHER NOTICE OF ADOPTION
PLANNING AND WAIVER OF RIGHT TO REVOKE CONSENT

REASON FOR THIS TRANSMITTAL

- ☒ State Law Change
☐ Federal Law or Regulation Change
☐ Court Order
☐ Clarification Requested by One or More Counties
☐ Initiated by CDSS

The purpose of this All County Letter (ACL) is to advise you of statutory changes affecting your responsibilities and/or programs.

Senate Bill 1726, Chapter 534, Statutes of 2008, became effective on January 1, 2009. It amended Family Code Sections 7612, 7613, 7630, 7660.5, 7662, 8632.5, 8700, 8714.5, 8802, and 8814.5 and added Section 8639. It also amended Probate Code Section 1510.

The main changes in the Family Code include the following:

- Section 7660.5 – Allows a child's presumed father to waive his right to notice of any adoption proceeding by executing a form developed by the California Department of Social Services (CDSS) before an authorized representative of the CDSS, licensed public or private adoption agency, or a notary public. This waiver of notice form may be executed before or after the birth of the child. Once signed, no notice, relinquishment for or consent to adoption of the child will be required from the presumed father, for the adoption to proceed.

The Waiver of Right to Further Notice of Adoption Planning (form AD 590A) will be amended to meet this requirement.

In addition, a new form, The Waiver of Right to Further Notice of Adoption Planning (form AD 590B), regarding an Indian child is being created, in order to meet the requirement of the Indian Child Welfare Act (ICWA) in cases where a child is subject to the ICWA and the presumed father wants to waive his right to further notice.

- Section 7662 - Allows a child's alleged father to waive his right to notice of any adoption proceeding or deny his paternity, before or after a child is born. Once a waiver or denial is signed, no notice of, relinquishment for, or consent to adoption of the child shall be required from the birth father for the adoption to proceed.

The Waiver of Right to Further Notice of Adoption Planning (form AD 590) and the Denial of Paternity by Alleged Natural Father (form AD 588) will be amended to meet this requirement.

- Section 8700 – Clarifies that adoption agencies accepting a relinquishment from a child's birth parent(s) are required to inform the birth parent(s) that during any time after the relinquishment is signed and before it is filed with CDSS, he or she may request the relinquishment be withdrawn. Pursuant to Title 22 California Code of Regulations Section 35000 (f)(3), "Filing of the Relinquishment Form," means "the department's receipt and acknowledgement of a certified copy of a relinquishment form that has been signed, witnessed and dated pursuant to Articles 1 and 2 of Subchapter 5 of these regulations." If the relinquishing parent makes the request as specified, the relinquishment must be withdrawn.
- Section 8814.5 – Allows a child's birth parent(s) to sign a waiver of the right to revoke consent form in the presence of an Adoption Service Provider (ASP) if the birth parent or parents are represented by independent legal counsel (attorney). In such case, the attorney for the birth parent(s) must conduct the interview of the birth parent(s), counsel the birth parent(s) about the nature of the intended waiver, and review the signed waiver. The attorney should therefore be present when the waiver form is being signed. However, an attorney who counsels the birth parent cannot be acting as the ASP who witnesses the signing of the waiver form.

An attorney who counsels the birth parent(s) is responsible for signing and delivering to the birth parent(s) and the CDSS or delegated county adoption agency a certificate in substantially the following form:

I, (name of attorney), have counseled my client, (name of client), on the nature and legal effect of the waiver of right to revoke consent to adoption. I am so disassociated from the interest of the petitioner(s)/prospective adoptive parent(s)

as to be in a position to advise my client impartially and confidentially as to the consequences of the waiver. (Name of client) is aware that California law provides for a 30-day period during which a birth parent may revoke consent to adoption. On the basis of this counsel, I conclude that it is the intent of (name of client) to waive the right to revoke, and make a permanent and irrevocable consent to adoption. (Name of client) understands that he/she will not be able to regain custody of the child unless the petitioner(s)/prospective adoptive parent(s) agree(s) to withdraw their petition for adoption or the court denies the adoption petition.

The ASP should receive a copy of the attorney's certification that the birth parent or parents have been counseled and attach the copy to the waiver form.

The ASP also must ensure that the signed waiver is delivered to the CDSS or delegated county adoption agency and the petitioners or their attorney no earlier than the end of the business day following the signing of the waiver. The ASP must inform the birth parent(s) that during this time period the birth parent(s) may request that the waiver be withdrawn. If the waiver is withdrawn, the 30-day time period within which a birth parent may revoke his or her consent would still be in effect unless the birth parent revokes the consent to adoption.

The Waiver of Right to Revoke Consent (form AD 929) is being amended to allow an ASP to witness the signing of the form and to comply with requirements regarding the independent legal counsel for the birth parent(s).

If you have any questions regarding this ACL, please contact the Permanency Policy Bureau at (916) 657-1858 for questions dealing with agency adoptions, or the Adoptions Services Bureau at (916) 651-8089 for questions dealing with independent adoptions.

Sincerely,

Original Document Signed By:

GREGORY E. ROSE
Deputy Director
Children and Family Services Division