

Interstate Compact on the Placement of Children

Colo. Rev. Stat. §24-60-1801 *et. seq.*

October 8, 2010

I. ICPC – What does it say?

- Article I – Purpose
- Article II - Definitions
- Article III – Conditions for Placement
- Article IV – Penalty for Illegal Placement
- Article V – Retention of Jurisdiction
- Article VI – Institutional Care
- Article VII – Compact Administrator
- Article VIII – Limitations
- Article IX – Enactment and Withdrawal
- Article X – Construction and Severability

What it is

- Statutory law in 52 jurisdictions (DC and Virgin Islands)
- Binding contract between states
- State law – and construed as such (subject to conflicting interpretations by each state)
- Jurisdictional instrument
- Binding on state government and private persons

What it is not

- Enforceable – relies on each state court
- A compact with the consent of Congress (US Const. Art. I, Sec.10, Clause 3)
- Express federal law (so not subject to the Supremacy clause)
- Not limited to federal judiciary review
- Rule making authority

Who oversees it?

- Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC) – a professional association of government officials and serves as the administrative body charged with carrying out the terms of the current compact. (this body is not specifically designated under the compact, nor is it given specific authority to make and enforce rules or the provisions of the compact)

Despite not having rule making authority – there are regulations adopted by AAICPC:

Reg. 3: Placement with parents, relatives

Reg. 7: Priority placement

Reg. 10: Guardians

II. Case Examples – Methods used to Circumvent the ICPC

- Mother traveling to another state to have baby (Secretariat Opinion)
- Mother signing a POA and allowing child to be brought to Colorado for adoption



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- *Department of Social Services v. District Court of the 18<sup>th</sup> Judicial*, 742 P.2d 339 (1987) – ICPC limits the jurisdiction of the juvenile court under 19-1-104 in actions involving interstate adoptions.
- *In the Interest of A.J.C.*, 88 P.3d 599 (Colo. 2004) – Court recognized sending agency shall retain jurisdiction but did not recognize mother as the agency but rather the intermediary. Sending agency was not the state but a person. Colorado courts could exercise jurisdiction to determine custody based on best interests of the child.
- Secretariat Opinions

### III. Model Case Scenario and State Department rules

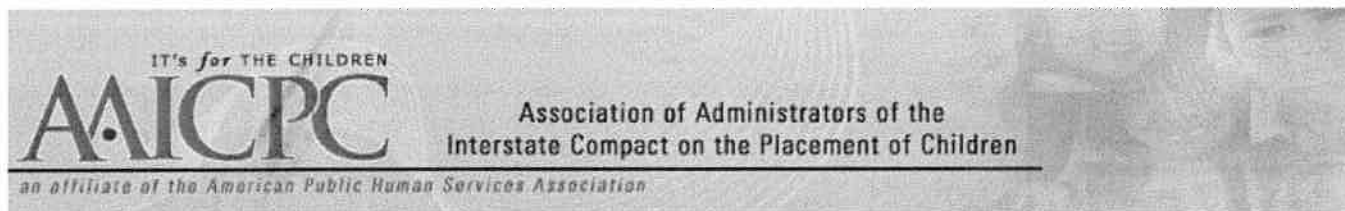
- 12 C.C.R. 2509 §7.710.5 – Placement of Children for Adoption
- Adoption procedure, 7.710.54
  - Assessment on adoptive family
  - Training to adoptive family
  - Provide birth or legal parent counseling prior to decision to relinquish
  - Complete a study of the child for adoption
- Interstate Adoptions, 7.710.63
  - Sending agency completes 100A form (in Colorado must be a licensed agency or a public agency – facilitators are not permitted)
  - All studies or reports for public adoptions through the ICPC are sent to the State Department unless otherwise authorized
  - All studies or reports for non-public adoptions sent to the non-public agency selected and monitored by the State Department
  - Non public interstate adoptions, 7.710.93
- CPA may not work with a facilitator to place or arrange for placement of a child if the facilitator is not licensed as an adoption agency in Colorado or the resident state of the birth mother or adoptive parents. 7.710.51C.

### IV. Consequences for the Child:

- Lack of permanency
- Inability to adopt because when it comes time to adopt, the court tries to follow ICPC
- Inability to adopt because the father had not been identified and his rights have not been addressed
- State where child is brought bears the responsibility for the welfare needs of the child, e.g. adoption subsidy
- Home where child placed is not a good environment or not able to meet the child's needs – adoption or placement disruption

### V. Possible Changes – Proposed new ICPC



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## About Us

The Interstate Compact on the Placement of Children (ICPC) is statutory law in all 52 member jurisdictions and a binding contract between member jurisdictions. The ICPC establishes uniform legal and administrative procedures governing the interstate placement of children.

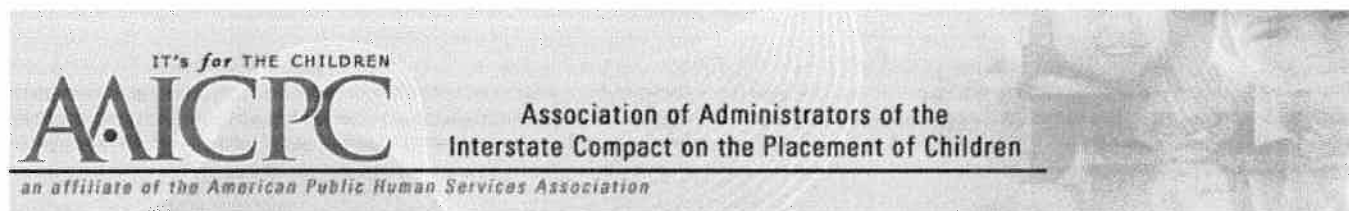
The Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC) was established in 1974 and consists of members from all 50 states, the District of Columbia and the U.S. Virgin Islands. The AAICPC has authority under ICPC to "promulgate rules and regulations to carry out more effectively the terms and provisions of this compact." The AAICPC obtains its Secretariat Services, as an affiliate of the American Public Human Services Association (APHSA).

The Secretariat to AAICPC provides ongoing administrative, legal and technical assistance to individual states that administer the Compact. The Secretariat provides resources and information for the purpose of resolving problems of mutual concern, and formulating common policies, practices and goals. The AAICPC Secretariat does not generally handle questions about individual cases. Questions about individual cases should be referred to the public human service agency, or private child placing agency responsible for the case. However, requests for general ICPC information can be referred to [ICPCinbox@aphsa.org](mailto:ICPCinbox@aphsa.org).



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## **ICPC Regulations**

### **Regulation No. 0.01.**

#### **Forms**

1. To promote efficiency in processing placements pursuant to the Interstate Compact on the Placement of Children (ICPC) and to facilitate communication among sending agencies, states and other concerned persons, the forms promulgated by the compact administrators, acting jointly, shall be used by all sending agencies, sending and receiving states, and others participating in the arranging, making, processing and supervision of placements.

2. ICPC forms shall be uniform as to format and substance, and each state shall make available a reference to where its forms may be obtained by the public.

3. The mandatory forms currently in effect are described below. These forms shall be reproduced in sufficient supply by each of the states to meet its needs and the needs of persons and agencies required to use them. Forms referenced in the preceding sentence, above, currently in effect are the following:

ICPC-100A "Interstate Compact Placement Request;"

ICPC-100B "Interstate Compact Report on Child's Placement Status;"

ICPC-100C "Quarterly Statistical Report: Placements Into An ICPC State;"

ICPC-100D "Quarterly Statistical Report: Placements Out Of An ICPC State;" and

ICPC-101 "Sending State's Priority Home Study Request."

4. Form ICPC-102 "Receiving State's Priority Home Study Request" is an optional form that is available for use.

5. Words and phrases used in this regulation have the same meanings as in the Compact, unless the context clearly requires another meaning.

6. This regulation is adopted pursuant to Article VII of the Interstate Compact on the Placement of Children by action of the Association of Administrators of the Interstate Compact on the Placement of Children at its annual meeting of April 29 through May 2, 2001; the regulation, as amended, was approved May 2, 2001, and is effective as of July 2, 2001.

### **Regulation No. 1**

#### **Conversion of Intrastate Placement into Interstate Placement;**

#### **Relocation of Family Units**

1. Regulation No. 1 as first effective May 1, 1973, is repealed and is replaced by the following:

2. A placement initially intrastate in character becomes an interstate placement subject to the Interstate Compact on the Placement of Children (ICPC) if the child's principal place of abode is moved to another state.

3. If the child is to be sent or brought to the receiving state more than forty-five (45) days in the future, the normal procedures of ICPC for an interstate placement shall be initiated. However, the ICPC-100A and the information accompanying it shall make it specific and clear that the relocation of a family unit is involved and that the family home is not yet in the receiving state. As much information as reasonably possible shall be given to the receiving state concerning the location and character of the intended family home in the

receiving state.

4. (a) In any instance where the decision to relocate into another state is not made until forty-five (45) days or less before the date on which it is intended to send or bring the child to the receiving state, an ICPC-100A and its supporting documentation shall be prepared immediately upon the making of the decision, processed promptly by the sending agency's state compact administrator and transmitted to the receiving state compact administrator. The sending agency's state compact administrator shall request that the receiving state provide prompt handling of the case with due regard for the desired time for the child to be sent or brought to the receiving state.

a. The documentation provided with a request for prompt handling

shall include:

(1) A form ICPC-100A fully completed.

(2) A copy of the court order pursuant to which the sending agency has authority to place the child or, if authority does not derive from a court order, a statement of the basis on which the sending agency has authority to place the child.

(3) A case history for the child.

(4) In any instance where the sending state has required licensure, certification or approval, a copy of the most recent license, certificate or approval of the qualification of the custodian(s) and/or their home showing the status of the custodian(s), as qualified custodian(s).

(5) A copy of the most recent home study of the custodian(s) and any updates thereof.

(6) A copy of the child's permanency plan and any supplements to that plan.

(7) An explanation of the current status of the child's Title IV-E eligibility under the Federal Social Security Act.

(c) Requests for prompt handling shall be as provided in paragraph 4(a) hereof. Some or all documents may be communicated by express mail or any other recognized method for expedited communication. The receiving state shall recognize and give effect to any such expedited transmission of an ICPC-100A and/or supporting documentation, provided that it is legible and appears to be a complete representation of the original. However, the receiving state may request and shall be entitled to receive originals or duly certified copies if it considers them necessary for a legally sufficient record under its laws.

(d) In an instance where a custodian(s) holds a current license, certificate or approval from the sending state evidencing qualification as a foster parent or other custodian, the receiving state shall give effect to such license, certificate or approval as sufficient to support a determination of qualification pursuant to Article III(d) of ICPC, unless the receiving state compact administrator has substantial evidence to the contrary. This provision applies to a case which meets the description set forth in paragraph 4(b) of this regulation.

(e) The receiving state may decline to provide a favorable determination pursuant to Article III(d) of ICPC if its compact administrator finds that the child's needs cannot be met under the circumstances of the proposed relocation, or until it has the documentation identified in subparagraph (b) hereof.

(f) If necessary or helpful to meet time requirements, the receiving state may communicate its determination pursuant to Article III(d) to the sending agency and the sending agency's state compact administrator by "FAX" or other means of facsimile transmission. However, this may not be done before the receiving state compact administrator has actually recorded the determination on the ICPC-100A. The written notice (the completed ICPC-100A) shall be mailed or otherwise sent promptly to meet Article III(d) written notice requirements.

5. If the referral is submitted by a custodian(s), a receiving state shall recognize and give effect to evidence that the custodian(s) have satisfactorily completed required training for foster parents or other parent training. Such recognition and effect shall be given if:

(a) the training program is shown to be substantially equivalent to training offered for the same purpose in the receiving state; and

(b) the evidence submitted is in the form of an official certificate or other document identifying the training.

6. Nothing in this regulation shall be construed to alter the obligation of a receiving state to supervise and report on the placement; nor to alter the requirement that the custodian(s) comply with the licensing and other applicable laws of the receiving state after arrival therein.

7. A favorable determination made by a receiving state pursuant to Article III(d) of the ICPC and this regulation means that the receiving state is making such determination on the basis of the best evidence available to it in accordance with the requirements of paragraph 4(b) of this regulation and does not relieve any custodian or other entity of the obligation to comply with the laws of the receiving state as promptly after arrival in the receiving state of the child as possible. If it is subsequently determined that the placement

in the receiving state appears to be contrary to the interest of the child, the sending agency shall arrange to return the child or make an alternative placement as provided in Article V(a) of the ICPC.

8. Within thirty (30) days of being notified by the sending state or by the custodian(s) that the custodian(s) and the child have arrived in the receiving state, the appropriate personnel of the receiving state shall make an initial contact with the custodian(s) to ascertain conditions and progress toward compliance with applicable laws and requirements of the receiving state.

9. Words and phrases used in this regulation have the same meanings as in the Compact, unless the context clearly requires another meaning.

10. This regulation is adopted pursuant to Article VII of the Interstate Compact on the Placement of Children by action of the Association of Administrators of the Interstate Compact on the Placement of Children at its annual meeting of April 1999.

#### **Regulation No. 2. Repealed.**

This regulation, adopted May 25, 1977, relating to certain programs in which children could be placed in family homes to permit their attendance at local public schools was repealed by action taken at the annual meeting of the Association of Administrators of the Interstate Compact on the Placement of Children, April 1999.

#### **Regulation No. 3**

##### **Placements with Parents, Relatives,**

##### **Non-agency Guardians, and Non-family Settings**

The following regulation, adopted by the Association of Administrators of the Interstate Compact on the Placement of Children, is declared to be in effect on and after July 2, 2001.

1. "Placement" as defined in Article II (d) includes the arrangement for the care of a child in the home of his parent, other relative, or non-agency guardian in a receiving state when the sending agency is any entity other than a parent, relative, guardian or non-agency guardian making the arrangement for care as a plan exempt under Article VIII (a) of the Compact.

2. "Conditions for Placement" as established by Article III apply to any placement as defined in Article II (d) and Regulations adopted by action of the Association of Administrators of the Interstate Compact on the Placement of Children.

3. The terms "guardian" and "non-agency guardian" have the same meanings as set forth in Regulation No. 10 of the Regulations for the Interstate Compact on the Placement of Children (ICPC).

4. The term "family free or boarding home" as used in Article II (d) of ICPC means the home of a relative or unrelated individual whether or not the placement recipient receives compensation for care or maintenance of the child, foster care payments, or any other payments or reimbursements on account of the child's being in the home of the placement recipient.

5. The term "foster care" as used in Article III of ICPC, except as modified in this paragraph, means care of a child on a 24-hour a day basis away from the home of the child's parent(s). Such care may be by a relative of the child, by a non-related individual, by a group home, or by a residential facility or any other entity. In addition, if 24-hour a day care is provided by the child's parent(s) by reason of a court-ordered placement (and not by virtue of the parent-child relationship), the care is foster care.

6. (a) Pursuant to Article VIII (a), this Compact does not apply to the sending or bringing of a child into a receiving state by the child's parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or the child's guardian and leaving the child with any such relative or non-agency guardian in the receiving state, provided that such person who brings, sends, or causes a child to be sent or brought to a receiving state is a person whose full legal right to plan for the child: (1) has been established by law at a time prior to initiation of the placement arrangement, and (2) has not been voluntarily terminated, or diminished or severed by the action or order of any court.

(b) The Compact does not apply whenever a court transfers the child to a non-custodial parent with respect to whom the court does not have evidence before it that such parent is unfit, does not seek such evidence, and does not retain jurisdiction over the child after the court transfers the child.

7. Placement of a child requires compliance with the Compact if such placement is with either of the following:

(a) any relative, person, or entity not identified in Article VIII of the Compact; or

(b) any entity not included in the definition of placement as specified in Article II (d) of the Compact.

8. If a court or other competent authority invokes the Compact, the court or

other competent authority is obligated to comply with Article V (Retention of Jurisdiction) of the Compact.

9. Words and phrases used in this regulation have the same meanings as in the Compact, unless the context clearly requires another meaning.

10. This regulation is adopted pursuant to Article VII of the Interstate Compact on the Placement of Children by action of the Association of Administrators of the Interstate Compact on the Placement of Children at its annual meeting of April 29 through May 2, 2001; the regulation, as amended, was approved on May 2, 2001 and is effective as of July 2, 2001.

#### **Regulation No. 4**

##### **Residential Placement**

The following regulation was adopted by the Association of Administrators of the Interstate Compact on the Placement of Children on April 20, 1983, was readopted in 1999, was amended in 2001, and is declared to be effective, as amended, as of July 2, 2001.

1. In determining whether the sending or bringing of a child to another state is exempt from the provisions of the Interstate Compact on the Placement of Children by reason of the exemption for various classes of institutions in Article II (d), the following concepts and terms shall have the following meanings:

(a) "Primarily educational institution" means an institution which operates one or more programs that can be offered in satisfaction of compulsory school attendance laws, in which the primary purpose of accepting children is to meet their educational needs; and which does not do one or more of the following:

(1) accept responsibility for children during the entire year;

(2) provide or hold itself out as providing child care constituting nurture sufficient to substitute for parental supervision and control or foster care;

(3) provide any other services to children, except for those customarily regarded as extracurricular or cocurricular school activities, pupil support services, and those services necessary to make it possible for the children to be maintained on a residential basis in the aforementioned school program or programs.

(b) "Hospital or other medical facility" means an institution for the acutely ill which discharges its patients when they are no longer acutely ill, which does not provide or hold itself out as providing child care in substitution for parental care or foster care, and in which a child is placed for the primary purpose of treating an acute medical problem.

(c) "Institution for the mentally ill or mentally defective" minors means a facility which is responsible for treatment of acute conditions, both psychiatric and medical, as well as such custodial care as is necessary for the treatment of such acute conditions of the minors who are either voluntarily committed or involuntarily committed by a court of competent jurisdiction to reside in it. Developmentally disabled has the same meaning as the phrase "mentally defective."

(d) Treatment for a chronic mental or behavioral condition, as described in this regulation, that is 24-hour care away from the child's parental home is foster care as such term is used in Article III of ICPC.

2. (a) Admission for treatment of an acute condition includes the treatment and care of minors who are mentally ill or developmentally disabled and who require stabilization of such condition for short-term treatment. Such short term treatment is exempt from the Interstate Compact on the Placement of Children.

(b) Placement for treatment of a chronic condition includes the treatment and care of minors who may be mentally ill, emotionally ill, or developmentally disabled and require treatment beyond what was required for stabilization of the underlying acute condition. Treatment modalities for chronic conditions may include psychotherapy and psychopharmacology.

(c) Any placement of a minor for treatment of that minor's chronic mental or behavioral condition into a facility having treatment programs for acute and chronic conditions must be made pursuant to the Interstate Compact on the Placement of Children. The Interstate Compact on the Placement of Children becomes applicable once the minor is placed for treatment of a chronic condition regardless of whether that child was originally placed in the same facility for treatment of an acute condition.

(d) A minor may be accepted into a residential treatment center without first having been in that facility for the treatment of an acute condition. An interstate placement of a minor into such a facility must be made pursuant to the Interstate Compact on the Placement of Children.

3. An institution for the mentally ill or developmentally disabled may accept a child for treatment and care without complying with ICPC, if the treatment and care and other services are entirely out-patient in character.

4. The type of funding source or sources used to defray the costs of treatment or other services does not determine whether the Interstate Compact on the Placement of Children applies. Such determination is made on a case-by-case basis.

5. The type of license, if any, held by an institution is evidence of its character, but does not determine the need for compliance with ICPC. Whether an institution is either generally exempt from the need to comply with the Interstate Compact on the Placement of Children or exempt in a particular instance is to be determined by the services it actually provides or offers to provide. In making any such determinations, the criteria set forth in this regulation shall be applied.

6. Words and phrases used in this regulation have the same meanings as in the Compact, unless the context clearly requires another meaning.

7. This regulation was amended pursuant to Article VII of the Interstate Compact on the Placement of Children by action of the Association of Administrators of the Interstate Compact on the Placement of Children at its annual meeting of April 29 through May 2, 2001; such amendment was approved on May 2, 2001 and is effective as of July 2, 2001.

#### **Regulation No. 5**

##### **Central State Compact Office**

Regulation No. 5 ("Central State Compact Office"), as first effective April 1982, is amended to read as follows:

1. It shall be the responsibility of each state party to the Interstate Compact on the Placement of Children to establish a procedure by which all Compact referrals from and to the state shall be made through a central state compact office. The Compact Office shall also be a resource for inquiries into requirements for placements into the state for children who come under the purview of this Compact.

2. The Association of Administrators of the Interstate Compact on the Placement of Children deems certain appointments of officers who are general coordinators of activities under the Compact in the party states to have been made by the executive heads of states in each instance wherein such an appointment is made by a state official who has authority delegated by the executive head of the state to make such an appointment. Delegated authority to make the appointments described above in this paragraph will be sufficient if it is either: specifically described in the applicable state's documents that establish or control the appointment or employment of the state's officers or employees; a responsibility of the official who has the delegated authority that is customary and accepted in the applicable state; or consistent with the personnel policies or practices of the applicable state. Any general coordinator of activities under the Compact who is or was appointed in compliance with this paragraph is deemed to be appointed by the executive head of the applicable jurisdiction regardless of whether the appointment preceded or followed the adoption of this paragraph.

3. Words and phrases used in this regulation have the same meanings as in the Compact, unless the context clearly requires another meaning.

4. This regulation was first effective on April 20, 1982; was amended as of April 1999; and is amended by the Compact Administrators, acting jointly and pursuant to Article VII of the Interstate Compact on the Placement of Children, at their annual meeting of April 2002, with such amendments effective after June 27, 2002.

#### **Regulation No. 6**

##### **Permission to Place Child: Time Limitations, Reapplication**

The following regulation, originally adopted in 1991 by the Association of Administrators of the Interstate Compact on the Placement of Children, is amended in 2001 and declared to be in effect, as amended, on and after July 2, 2001.

1. Permission to place a child given pursuant to Article III (d) of the Interstate Compact on the Placement of Children shall be valid and sufficient to authorize the making of the placement identified in the written document ICPC-100A, by which the permission is given for a period of six (6) months commencing on the date when the receiving state compact administrator or his duly authorized representative signs the aforesaid ICPC-100A.

2. If the placement authorized to be made as described in Paragraph 1. of this Regulation is not made within the six (6) months allowed therein, the sending agency may reapply. Upon such reapplication, the receiving state may require the updating of documents submitted on the previous application, but shall not require a new home study unless the laws of the receiving state provide that the previously submitted home study is too old to be currently valid.

3. If a foster care license, institutional license or other license, permit or certificate held by the proposed placement recipient is still valid and in force, or if the proposed placement recipient continues to hold an appropriate license, permit or certificate, the receiving state shall not require that a new license, permit or certificate be obtained in order to qualify the proposed placement recipient to receive the child in placement.

4. Upon a reapplication by the sending agency, the receiving state shall determine whether the needs or condition of the child have changed since it initially authorized the placement to be made. The receiving state may deny the placement if it finds that the proposed placement is contrary to the interests of the child.

5. Words and phrases used in this regulation have the same meanings as in the Compact, unless the context clearly requires another meaning.

6. This regulation was readopted pursuant to Article VII of the Interstate Compact on the Placement of Children by action of the Association of Administrators of the Interstate Compact on the Placement of Children at its annual meeting of April 1999; it is amended pursuant to Article VII of the Interstate Compact on the Placement of Children by action of the Association of Administrators of the Interstate Compact on the Placement of Children at its annual meeting of April 29 through May 2, 2001, was approved May 2, 2001, and is effective in such amended form as of July 2, 2001.

### **Regulation No. 7**

#### **Priority Placement**

The following regulation adopted by the Association of Administrators of the Interstate Compact on the Placement of Children is declared to be in effect on and after July 2, 2001.

1. Words and phrases used in this regulation shall have the same meanings as those ascribed to them in the Interstate Compact on the Placement of Children (ICPC). A word or phrase not appearing in ICPC shall have the meaning ascribed to it by special definition in this regulation or, where not so defined, the meaning properly ascribed to it in common usage.

2. This regulation shall not apply to any case in the sending state wherein:

- (a) the request for placement of the child is for licensed or approved foster family care or adoption; or
- (b) the child is already in the receiving state in violation of ICPC.

3. Whenever a court, upon request, or on its own motion, or where court approval is required, determines that a proposed priority placement of a child from one state into another state is necessary, the court shall make and sign an order embodying that finding. The court shall send its order to the Sending Agency within two (2) business days. The order shall include the name, address, telephone number, and if available, the FAX number, of the judge and the court. The court shall have the sending agency transmit, within three (3) business days, the signed court order, a completed Form 100A ("Request for Placement") and supporting documentation pursuant to ICPC Article III, to the sending state Compact Administrator. Within a time not to exceed two (2) business days after receipt of the ICPC priority placement request, the sending state Compact Administrator shall transmit the priority request and its accompanying documentation to the receiving state Compact Administrator together with a notice that the request for placement is entitled to priority processing.

4. The court order, ICPC-100A, and supporting documentation referred to in Paragraph Three (3) hereof shall be transmitted to the receiving state Compact Administrator by overnight mail together with a cover notice calling attention to the priority status of the request for placement. The receiving state Compact Administrator shall make his or her determination pursuant to Article III (d) of ICPC as soon as practicable but no later than twenty (20) business days from the date the overnight mailing was received and forthwith shall send the completed 100-A by FAX to the sending state Compact Administrator.

5. (a) If the receiving state Compact Administrator fails to complete action as the receiving state prescribed in Paragraph Four (4) hereof within the time period allowed, the receiving state shall be deemed to be out of compliance with ICPC. If there appears to be a lack of compliance, the court, which made the priority order, may so inform an appropriate court in the receiving state, provide that court with copies of relevant documentation in the case, and request assistance. Within its jurisdiction and authority, the requested court may render such assistance, including the making of appropriate orders, for the purpose of obtaining compliance with this Regulation and ICPC.

(b) The foregoing shall not apply if:

(1) within two (2) business days of receipt of the ICPC priority placement request, the sending state Compact Administrator determines that the ICPC request documentation is substantially insufficient, specifies that additional information is needed, and requests the additional documentation from the sending agency. The request shall be made by FAX, or by telephone if FAX is not available, or

(2) within two (2) business days of receipt of the ICPC priority placement request, the receiving state Compact Administrator notifies the sending state Compact Administrator that further information is necessary. Such notice shall specifically detail the information needed. For a case in which this subparagraph applies, the twenty (20) business day period for the receiving state Compact Administrator to complete action shall be calculated from the date of the receipt by the receiving state Compact Administrator of the information requested.

(c) Where the sending state court is not itself the sending agency, it is the responsibility of the sending agency to keep the court, which issued the priority order, informed of the status of the priority request.

6. A court order finding entitlement to a priority placement shall not be valid unless it contains an express finding that one or more of

the following circumstances applies to the particular case and sets forth the facts on which the court bases its finding:

(a) the proposed placement recipient is a relative belonging to a class of persons who, under Article VIII (a) of ICPC could receive a child from another person belonging to such a class, without complying with ICPC and; (1) the child is under two (2) years of age; or (2) the child is in an emergency shelter; or (3) the court finds that the child has spent a substantial amount of time in the home of the proposed placement recipient.

(b) the receiving state Compact Administrator has a properly completed ICPC-100A and supporting documentation for over thirty (30) business days, but the sending agency has not received a notice pursuant to Article III (d) of ICPC determining whether the child may or may not be placed.

7. Time periods in this regulation may be modified with a written agreement between the court which made the priority order, the sending agency, the receiving state Compact Administrator, and the sending state Compact Administrator. Any such modification shall apply only to the single case to which it is addressed.

8. To fulfill its obligations under ICPC, a state and its local agencies must process interstate cases no less quickly than intrastate cases and give no less attention to interstate hardship cases than to intrastate hardship cases. If in doing so, a receiving state Compact Administrator finds that extraordinary circumstances make it impossible for it and its local agencies to comply with the time requirements set forth in this regulation, it may be excused from strict compliance therewith. However, the receiving state Compact Administrator shall, within two (2) business days of ascertaining inability to comply, notify the sending state Compact Administrator via FAX of the inability to comply and shall set forth the date on or before which it will complete action. The notice shall contain a full identification and explanation of the extraordinary circumstances which are delaying compliance.

9. Unless otherwise required or allowed by this regulation, all transmittals of documents or other written materials shall be by overnight express mail carrier service.

10. This regulation as first effective October 1, 1996, and readopted pursuant to Article VII of the Interstate Compact on the Placement of Children by action of the Association of Administrators of the Interstate Compact on the Placement of Children at its annual meeting of April 1999, is amended pursuant to Article VII of the Interstate Compact on the Placement of Children by action of the Association of Administrators of the Interstate Compact on the Placement of Children at its annual meeting of April 29 through May 2, 2001; the regulation, as amended, was approved on May 2, 2001 and is effective as of July 2, 2001.

#### **Regulation No. 8**

##### **Change of Placement Purpose**

1. An ICPC-100B should be prepared and sent in accordance with its accompanying instructions whenever there is a change of purpose in an existing placement, e.g., from foster care to preadoption even though the placement recipient remains the same. However, when a receiving state or a sending state requests a new ICPC-100A in such a case, it should be provided by the sending agency and transmitted in accordance with usual procedures for processing of ICPC-100As.

2. Words and phrases used in this regulation have the same meanings as in the Compact, unless the context clearly requires another meaning.

3. This regulation is effective on and after April 30, 2000, pursuant to Article VII of the Interstate Compact on the Placement of Children by action of the Association of Administrators of the Interstate Compact on the Placement of Children at its annual meeting of April 30–May 3, 2000.

#### **Regulation No. 9**

##### **Definition of a Visit**

Regulation No. 9 ("Definition of a Visit"), as first adopted in 1999, is amended to read as follows:

1. A visit is not a placement within the meaning of the Interstate Compact on the Placement of Children (ICPC). Visits and placements are distinguished on the basis of purpose, duration, and the intention of the person or agency with responsibility for planning for the child as to the child's place of abode.

2. The purpose of a visit is to provide the child with a social or cultural experience of short duration, such as a stay in a camp or with a friend or relative who has not assumed legal responsibility for providing child care services.

3. It is understood that a visit for twenty-four (24) hours or longer will necessarily involve the provision of some services in the nature of child care by the person or persons with whom the child is staying. The provision of these services will not, of itself, alter the character of the stay as a visit.

4. If the child's stay is intended to be for no longer than thirty (30) days and if the purpose is as described in Paragraph 2, it will be

presumed that the circumstances constitute a visit rather than a placement.

5. A stay or proposed stay of longer than thirty (30) days is a placement or proposed placement, except that a stay of longer duration may be considered a visit if it begins and ends within the period of a child's vacation from school as ascertained from the academic calendar of the school. A visit may not be extended or renewed in a manner which causes or will cause it to exceed thirty (30) days or the school vacation period, as the case may be. If a stay does not from the outset have an express terminal date, or if its duration is not clear from the circumstances, it shall be considered a placement or proposed placement and not a visit.

6. A request for a home study or supervision made by the person or agency which sends or proposes to send a child on a visit and that is pending at the time that the visit is proposed will establish a rebuttable presumption that the intent of the stay or proposed stay is not a visit.

7. A visit as defined in this regulation is not subject to the Interstate Compact on the Placement of Children.

8. Words and phrases used in this regulation have the same meanings as in the Compact, unless the context clearly requires another meaning.

9. This regulation was first adopted as a resolution effective April 26, 1983; was promulgated as a regulation as of April 1999; and is amended by the Compact Administrators, acting jointly and pursuant to Article VII of the Interstate Compact on the Placement of Children, at their annual meeting of April 2002, with such amendments effective after June 27, 2002.

### **Regulation No. 10**

#### **Guardians**

Regulation No. 10 ("Guardians"), as first adopted in 1999, is amended to read as follows:

#### 1. Guardian Defined.

As used in the Interstate Compact on the Placement of Children (ICPC) and in this Regulation:

(a) "Guardian" means a public or private agency, organization or institution which holds a valid and effective permanent appointment from a court of competent jurisdiction to have custody and control of a child, to plan for the child, and to do all other things for or on behalf of a child which a parent would have authority and responsibility for doing by virtue of an unrestricted parent-child relationship. An appointment is permanent for the purposes of this paragraph if the appointment would allow the guardianship to endure until the child's age of majority without any court review, subsequent to the appointment, of the care that the guardian provides or the status of other permanency planning which the guardian has a professional obligation to carry out. Guardian also means an individual who is a non-agency guardian as defined in subparagraph (b) hereof.

(b) "Nonagency guardian" means an individual holding a currently valid appointment from a court of competent jurisdiction to have all of the authority and responsibility of a guardian as defined in subparagraph (a) hereof.

#### 2. Prospective Adoptive Parents Not Guardians.

An individual with whom a child is placed as a preliminary to a possible adoption cannot be considered a non-agency guardian of the child, for the purpose of determining applicability of ICPC to the placement, unless the individual would qualify as a lawful recipient of a placement of the child without having to comply with ICPC as provided in Article VIII (a) thereof.

#### 3. Effect of Guardianship on ICPC Placements.

(a) An interstate placement of a child with a nonagency guardian, whose appointment to the guardianship existed prior to consideration of the making of the placement, is not subject to ICPC if the sending agency is the child's parent, stepparent, grandparent, adult brother or sister, or adult uncle or aunt.

(b) An appropriate court of the sending agency's state must continue its jurisdiction over a non-exempt placement until applicability of ICPC to the placement is terminated in accordance with Article V (a) of ICPC.

#### 4. Permanency Status of Guardianship.

(a) A state agency may pursue a guardianship to achieve a permanent placement for a child in the child welfare system, as required by federal or state law. In the case of a child who is already placed in a receiving state in compliance with ICPC, appointment of the placement recipient as guardian by the sending state court is grounds to terminate the applicability of the ICPC when the sending and receiving state compact administrators concur on the termination pursuant to Article V (a). In such an instance, the court which appointed the guardian may continue its jurisdiction if it is maintainable under another applicable law.

(b) If, subsequent to the making of an interstate placement pursuant to ICPC, a court of the receiving state appoints a non-agency guardian for the child, such appointment shall be construed as a request that the sending agency and the receiving state concur in the discontinuance of the application of ICPC to the placement. Upon concurrence of the sending and receiving states, the sending agency and an appropriate court of the sending state shall close the ICPC aspects of the case and the jurisdiction of the sending agency pursuant to Article V (a) of ICPC shall be dismissed.

#### 5. Guardian Appointed by Parent.

If the statutes of a jurisdiction so provide, a parent who is chronically ill or near death may appoint a guardian for his or her children, which guardianship shall take effect on the death or mental incapacitation of the parent. A nonagency guardian so appointed shall be deemed a nonagency guardian as that term is used in Article VIII (a) of ICPC, provided that such nonagency guardian has all of the powers and responsibilities that a parent would have by virtue of an unrestricted parent-child relationship. A placement with a nonagency guardian as described in this paragraph shall be effective for the purposes of ICPC without court appointment or confirmation unless the statute pursuant to which it is made otherwise provides and if there is compliance with procedures required by the statute. However, the parent must be physically present in the jurisdiction having the statute at the time that he or she makes the appointment or expressly submits to the jurisdiction of the appointing court.

#### 6. Other Definitions of Guardianship Unaffected.

The definitions of "guardian" and "nonagency guardian" contained in this regulation shall not be construed to affect the meaning or applicability of any other definitions of "guardian" or "nonagency guardian" when employed for purposes or to circumstances not having a bearing on placements proposed to be made or made pursuant to ICPC.

7. Words and phrases used in this regulation have the same meanings as in the Compact, unless the context clearly requires another meaning.

8. This regulation was first promulgated in April 1999; it is amended by the Compact Administrators, acting jointly and pursuant to Article VII of the Interstate Compact on the Placement of Children, at their annual meeting of April 2002, with such amendments effective after June 27, 2002.





providing the service which outlines the agency's procedures and fees for these services.

- C. The agencies selected shall agree to participate in any training provided by the State Department.
- D. The agencies selected will return to the State Department the record and a copy of the material released within thirty (30) calendar days of release of the information.

## **7.710.9 NON-PUBLIC INTERSTATE AND INTERCOUNTRY ADOPTIONS**

### **7.710.91 Non-Public Agency [Rev. eff. 5/1/10]**

Pursuant to Section 19-5-205.5, C.R.S., the State Department shall select a non-public agency to perform the administrative review and approval or denial functions required by the Interstate Compact on the Placement of Children (ICPC) and statutes governing foreign adoptions. Agencies selected by the State Department to provide these functions shall hereafter be referred to as "selected agencies".

Agencies that perform or assist in obtaining adoptive placements shall hereafter be referred to as "placing agencies." The Interstate Compact defines the persons and agencies who, when they place a child from one state into another state, shall follow ICPC procedures. These persons and agencies are referred to as "sending agencies" (per Section 7.307.2, 12 CCR 2509-4)

### **7.710.92 Qualifying Criteria for Selection of a Non-Public Agency [Rev. eff. 5/1/10]**

- A. The agency selected to perform this administrative function shall be either a licensed child placement agency designated to facilitate adoptions or a non-public agency that meets the criteria to be a licensed child placement agency that facilitate adoptions.
- B. A designated placement supervisor or an individual who meets the criteria to be a designated placement supervisor shall sign documents related to interstate or foreign adoptions (see Section 7.710.23, A, 5).
- C. Supervision of the position(s) responsible for performing this administrative function shall be provided from within the selected agency by a position(s) that is a designated placement supervisor or meets the criteria to be a designated placement supervisor.
- D. The selected agency shall have been a licensed child placement agency in good standing with the State Department or have met the criteria to be a licensed child placement agency for at least five (5) years.
- E. Selected agencies shall not perform this administrative function regarding cases in which they are the placing agencies or have any other vested interest in the outcome of the administrative review since such action would constitute a conflict of interest.

The selected agency shall submit such cases to a non-public agency with which it subcontracts to perform the administrative function. The agency with which the selected agency subcontracts must meet the same qualifying criteria as a selected agency pursuant to this section.

### **7.710.93 Interstate Non-Public Adoptions [Rev. eff. 5/1/10]**

#### **A. Where and How to Send Adoptive Placement Request Packets**

Adoptive placement request packets shall be sent in triplicate by the sending agency to the selected agency. The name and address of such agency shall be distributed by the State Department.

#### **B. Time Frame for Processing Adoptive Placement Request Packets**

1. Upon receipt of a copy for the administrative services of the selected agency, the selected agency shall review the request packets and shall grant or deny permission for the placement to occur within twenty-four (24) hours, excluding weekends and holidays.
2. Upon receipt of a complete set of request packets from a Colorado local agency for an adoptive placement into another state, including the fee for the administrative services of the selected agency, the selected agency shall review the request packets for compliance with Colorado laws and procedures, and the packets, including the accompanying 100-A, signed and dated by the authorized signer or the designee of that authorized signer, shall be sent on to the receiving state ICPC office within twenty-four (24) hours, excluding weekends and holidays.
3. Permission for the placement to occur or denial of the placement request shall be signified by the dated signature of the authorized signer or the designee of that authorized signer on the Form 100-A that accompanied the request packets. If verbal permission for placement of the child who is the subject of the placement request is initially given to the sending state ICPC office, it shall only be considered a valid form of permission for placement if such verbal permission is immediately followed by the properly signed 100-A being sent by facsimile process to the sending state ICPC office. Within twenty-four (24) hours of such facsimile being sent, copies of the original 100-A and an accompanying memo from the authorized signer of the 100-A that is written on the letterhead stationery of the selected agency shall be mailed to the sending state ICPC office and its local agency.
4. The authorized staff in the selected agency shall work with the sending state ICPC office, and/or with Colorado's local sending agency, and with other parties involved with a requested adoptive placement to assist the sending party in bringing the request packets into compliance with applicable statutes and/or rules and regulations. As soon as possible, while such compliance issues are being clarified and potentially resolved, it shall be one option of the selected agency to return incomplete packets to the sending state ICPC office.

#### **C. Materials Required in Adoptive Request Packets for Children for Whom an Adoptive Placement into Another State is Requested**

1. Court documents showing the child is free for adoption. All birth parents who are residents of Colorado shall relinquish in a Colorado court and fulfill all Colorado statutory requirements for relinquishment. Adoption consent forms from other states signed by Colorado residents shall not be considered legal in Colorado.
  2. Birth and discharge medical information on the child from the hospital where the child was born.
  3. Birth Parent counseling report and affidavit from a licensed child placement agency in Colorado regarding the birth parents.
  4. Genetic/medical/social background information regarding the birth parents
  5. Written study regarding the adoptive parent(s) that has been completed and approved by a Colorado licensed child placement agency or individual legally approved by the receiving state to perform such studies. Adoptive studies or their updates shall be no more than one year old.
  6. Itemized list of monies paid to attorneys, agencies and birth parents, including a statement that no money has been paid to locate for adoption the child who is the subject of the 100-A. This list shall separately specify all fees and costs charged for services associated with the review and approval of interstate adoptions.
  7. Documentation of compliance with the Indian Child Welfare Act.
  8. The name of any Colorado and/or out-of-state attorney involved in the requested placement.
  9. If legal rights have not been terminated or legally relinquished by both birth parents, a legal risk statement shall be signed by the adoptive parents, accompanied by documentation certifying the initiation of relinquishment or termination court procedures.
- D. Materials Required in Request Packets for Children to be Placed into Colorado from Another State

The materials required in request packets for children to be placed into Colorado from another state are identical to the materials described in Section 7.307.80, D, with the following exceptions. If the sending state does not require proof of relinquishment counseling, Colorado shall not require this in order to approve an adoptive placement into this state. The fulfillment of the sending state's requirements regarding consent forms shall satisfy Colorado's requirements for purposes of approval of the adoptive placement.

#### **7.710.94 Non-Public Foreign Adoptions [Rev. eff. 5/1/10]**

##### **A. Requests for Approval of USCIS Recommendation**

For each adoptive family assessed for placement of a foreign national, the agency shall submit the following information to the selected agency:

1. Three (3) copies of the USCIS recommendation form with Section I completed, signed and dated.
  2. Applicable fees.
  3. An adoptive family assessment completed in accordance with Section 7.710.56.
  4. Medical and/or legal documents of the foreign national, if available.
  5. A statement of affirmation signed by the Executive Director that the Colorado licensed child placement agency has documentation as required in Section 7.710.64, C, 2.
  6. Copies of any and all agreements that the Colorado licensed child placement agency has to verify compliance with Section 7.710.64, C and D.
  7. A copy of the foreign country's adoption eligibility requirements.
- B. Time Frames and Procedures for Processing Requests for Recommendations
- The following case materials with the appropriate fees shall be forwarded to the selected agency for review. The name and address of the agency shall be distributed by the State Department.
1. Upon receipt of a properly completed recommendation form and attachments in accordance with Section 7.710.94, A, the selected agency shall review and grant or deny the approval within twenty-four (24) hours of receipt, excluding weekends and holidays.
  2. In the event of an unresolved concern or dispute between the sending Colorado agency and the selected agency regarding the role of the selected agency, the selected agency may refer the case to the Colorado State Department for review and resolution after reasonable attempts to obtain needed clarifications or additional information have been unsuccessful.
  3. After approving the recommendation, the original plus one copy shall be returned to the Colorado agency.

##### **C. Notice of Arrival**

1. As soon as possible, but no later than six (6) months after arrival in the U.S., the Colorado agency shall send to the selected agency a notice of arrival which contains the following information:
  - a. The adoptive parent(s)' names and addresses.
  - b. The child's birth name, adoptive name, sex and date of birth.
  - c. If at any time in the process the licensed agency or prospective adoptive family becomes aware that the child's adoption will not be finalized in the foreign country, the family and agency are to notify the state in writing of the changes with an explanation as to the reasons for the change in status. If the child returns to the state and was not legally adopted in the foreign country, all documents concerning the child's legal status and the type of visa which was issued allowing entrance into the United States shall be submitted to the Colorado Department of Human Services, Division of Child Care, for review by appropriate entities. The licensed adoption agency shall ensure that the home is certified as a foster home.