

**PROPOSED REGULATION OF THE DIVISION OF CHILD AND
FAMILY SERVICES OF THE DEPARTMENT
OF HUMAN RESOURCES**

LCB File No. R067-99

August 3, 1999

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1, 3, 5, 10 and 11, NRS 127.230; §4, NRS 127.230 and 432.032; and §§2 and 6-9, NRS 127.230 and 127.2817.

Section 1. Chapter 127 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this regulation.

Sec. 2. *Except as otherwise provided in this section, the division will not, and a child-placing agency shall not, deny or delay:*

1. An application of a person to become an adoptive or foster parent; or

2. The placement of a child,

based on the race, color or national origin of the person applying to become the adoptive parent or foster parent or of the child to be adopted or placed in foster care. The provisions of this section do not apply if the child is subject to the provisions of the Indian Child Welfare Act of 1978, 25 U.S.C. §§ 1901 et seq.

Sec. 3. *The division will consider a child with special needs to be eligible for payments under the federal adoption assistance program pursuant to 42 U.C.S. § 673 if the child:*

1. Was adopted in a prior adoption that occurred on or after October 1, 1997;

2. Was determined by the division to be a child with special needs in the prior adoption;

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3. Was determined to be eligible for payments under the federal adoption assistance program pursuant to 42 U.S.C. § 673 in the prior adoption;

4. Is available for adoption again because:

(a) The prior adoption has been dissolved and the parental rights of the adoptive parents have been terminated; or

(b) The adoptive parents have died; and

5. Fails to meet the eligibility requirements to receive assistance from the aid to families with dependent children program pursuant to 42 U.S.C. §§ 601 et seq. or the supplemental security income program pursuant to 42 U.S.C. §§ 1381 et seq., but would meet such requirements if:

(a) The child were treated as if he were in the same financial and other circumstances that he was in the last time he was determined to be eligible for payments under the federal adoption assistance program; and

(b) The prior adoption were treated as never having occurred.

Sec. 4. 1. *The division will provide health insurance, through one or more state programs for medical assistance, for any child:*

(a) Determined to be a child with special needs for whom there is in effect an agreement for adoption assistance between the state and the adoptive parent, other than an agreement under the federal adoption assistance program under Part E of Title IV of the Social Security Act, 42 U.S.C. §§ 670 et seq.; and

(b) Who the division has determined cannot be placed for adoption without medical assistance because of the special needs of the child for medical, mental health or rehabilitative care.

2. The health insurance provided by the division pursuant to subsection 1 must provide the same type and kind of benefits as those benefits that would be provided for a child by this state in accordance with Title XIX of the Social Security Act, 42 U.S.C. §§ 1396 et seq., or a comparable state medical plan.

3. If the division provides coverage for a child pursuant to subsection 1 through a state program for medical assistance other than the program under Title XIX of the Social Security Act, 42 U.S.C. §§ 1396 et seq., and the division exceeds its funding for services under the other program, the child shall be deemed to be receiving aid or assistance as provided under the state plan for Part E of Title IV of the Social Security Act, 42 U.S.C. §§ 670 et seq.

4. In determining the cost-sharing requirements for health-care services provided pursuant to subsection 3, the division will, to the extent that coverage is provided through a state medical assistance program, take into consideration the circumstances of the adopting parents and the needs of the child being adopted consistent with the rules governing that program.

Sec. 5. *1. The division will consider the placement of a child with special needs with a resident of another state who has applied to adopt the child if the out-of-state resident appears to be a suitable placement candidate.*

2. The division will respond with reasonable promptness to a request by an out-of-state resident for the placement of a child through adoption.

3. The division will not delay or deny the placement of a child in accordance with this section when an approved family is available outside the jurisdiction of the division.

4. The division will grant a fair hearing to a person approved to adopt a child who alleges the division delayed or denied placement of a child with the person because the person resides

outside the jurisdiction of the division. The provisions of NAC 127.350 apply to requests for hearings and hearings held pursuant to this subsection.

Sec. 6. NAC 127.235 is hereby amended to read as follows:

127.235 1. A person who wishes to have his home studied by a child-placing agency for the purpose of adoption ~~[shall:]~~ **must:**

(a) Make a written application on a form provided by the agency;

(b) Submit a copy of his fingerprints as required by NRS 127.281, unless the applicant is also a foster parent licensed by the agency conducting the study of the prospective adoptive home;

(c) Sign a release of information, upon the request of the agency, authorizing the agency to contact any person who the agency determines may have information which is necessary to evaluate the home; and

(d) Cooperate with the agency by providing other information as necessary to evaluate the home.

2. Upon receiving applications from prospective adoptive parents, a child-placing agency shall:

(a) Assist the applicants in determining whether adoption is in their best interests.

(b) Inform the applicants of the:

(1) Types of adoption **that** the agency offers.

(2) Types of children available for adoption.

(3) Types of financial assistance available for the adoption of children with special needs, and the procedures and criteria for obtaining that assistance.

(4) Procedures involved in adoption.

(c) Provide the applicants with a copy of the agency's schedule of fees.

(d) Evaluate the applicants to determine their suitability for becoming adoptive parents. Such an evaluation must include:

(1) An interview and assessment of each individual applicant and, if applicants are married, an interview and assessment of both applicants together.

(2) A visit to and assessment of the home of the applicants ~~§~~, *including, without limitation, a fire and safety inspection that is conducted in a manner approved by the division.*

(3) A request for and review of any reports and investigations made pursuant to chapter 432B of NRS regarding the abuse or neglect of a child by the applicants.

(4) A request for and review of any information concerning the applicants maintained by local agencies of law enforcement.

(5) A request for and review of any records of criminal history regarding the applicants obtained pursuant to NRS 127.281.

(6) The receipt and review of at least five *satisfactory* references from persons who have known the applicants for not less than 2 years. Not more than two of the references may be from members of the family of an applicant.

(7) A medical examination of the applicants and each member of their household.

(8) Verification of the marital status of the applicants, including the review of any applicable records regarding marriage, divorce, and the death of a spouse.

Sec. 7. NAC 127.238 is hereby amended to read as follows:

127.238 1. A child-placing agency shall annually update the study of the prospective adoptive home of an applicant approved for the placement of a child until:

(a) A child is placed with that applicant;

(b) The applicant requests that his name be removed from the list of approved adoptive homes; or

(c) The child-placing agency removes the applicant from the list of approved homes in accordance with subsection 3,

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whichever occurs first.

2. An updated study of a prospective adoptive home must include ~~[aH]~~ :

(a) *All* of the changes which have occurred since the initial study or the most recent updated study of the home, as appropriate ~~[H]~~ ;

(b) *A request for and review of any reports and investigations made pursuant to chapter 432B of NRS regarding the abuse or neglect of a child by the applicant; and*

(c) *A request for and review of any information concerning the applicant maintained by local agencies of law enforcement.*

3. ~~[A]~~ *Except as otherwise provided in subsection 3 of NAC 127.240, a* child-placing agency shall remove an applicant from the list of approved adoptive homes if the updated information indicates concerns or conditions which constitute a reason pursuant to NAC 127.240 for a denial of an application for adoption.

Sec. 8. NAC 127.239 is hereby amended to read as follows:

127.239 1. A child-placing agency shall select an adoptive home for a child in the custody of that agency based on the ability of the members of that home to meet the needs of that child.

2. Except as otherwise provided in this subsection, the division will consider the list of approved adoptive homes for the placement of a child in the order of the date on which the homes were approved until a home which best meets the needs of the child to be adopted is

identified. The division may consider a prospective adoptive home out of order if the applicants are willing to:

(a) Provide financial or medical assistance related to the birth of the child which the biological parent is unable to provide;

(b) Consider the degree of openness desired by the biological parent; or

(c) Accept a legal-risk placement.

3. The child-placing agency ~~will~~ *shall* make a comprehensive individualized assessment for the placement of a child based on the specific needs and circumstances of that child. The child-placing agency ~~will~~ *shall* consider the following factors in the selection of an adoptive home for a particular child:

(a) Placement of the child with a member of his extended family.

(b) Placement of the child with his siblings. If a child has one or more siblings who are also available for adoption, the division will make every effort to place the children in the same adoptive home, regardless of whether the children were living in separate homes before the placement for adoption.

(c) How the home and the members of the adoptive family may meet the current and future specific needs of the child.

(d) The legal status of the child, whether the adoptive family is willing to accept a legal-risk placement, and the extent to which the adoptive family is willing to assume such a legal risk.

(e) Any other special considerations which may be necessary based on the needs and circumstances of the child.

~~[No factor identified in this subsection may be the sole reason for placing a child with a particular family.]~~

~~—4. The race, color, or national origin of a child must not be considered as a factor for placing a child in a specific adoptive home unless:~~

~~—(a) The individualized assessment of the child's needs indicates that such a factor is significant to the needs of the child; and~~

~~—(b) Such a factor must be considered to ensure that the best interests of the child are being served.~~

~~The provisions of this subsection do not apply if the child is an Indian child subject to the provisions of the Indian Child Welfare Act of 1978, 25 U.S.C. §§ 1901 et seq.~~

~~—5.]~~ **4.** If the biological parent who relinquishes his parental rights to a child-placing agency wishes to be involved in the selection process, the agency shall allow that parent to review adoptive studies selected by the agency in accordance with subsections 2 ~~[, 3, and 4.]~~ **and 3.** The agency shall withhold information about the prospective adoptive family from the biological parent in accordance with the type of adoption desired pursuant to NAC 127.210.

~~[6.]~~ **5.** For children who are not in the custody of an agency, the person responsible for the child may select the adoptive family.

Sec. 9. NAC 127.240 is hereby amended to read as follows:

127.240 1. To be approved as a prospective adoptive home, the applicant must demonstrate his capacity to be a parent and to meet the needs of an adopted child, including his ability to:

(a) Provide the child with conditions and opportunities to promote the healthy personality growth and development of the potential of the child;

(b) Assume responsibility for the *safety*, care, support, education, and character development of the child; and

(c) Offer a reasonably happy and secure family life with love, understanding, guidance, and companionship.

2. An application to adopt must be denied if:

(a) The applicant has submitted false information or withheld information relevant to the study of his home.

(b) The applicant refuses or fails to provide information requested by the child-placing agency within the period established by the agency.

(c) Two persons are jointly applying to adopt a child and the persons are not legally married to each other.

(d) The marriage of two persons legally married to each other who are jointly applying to adopt a child is determined by the child-placing agency to be unstable.

(e) The applicant is married and his spouse has not joined in the application.

(f) The size of the housing of the applicant is inadequate to accommodate an additional child.

(g) The living conditions of the home of the applicant are inadequate and could be hazardous to the health of the child.

(h) The applicant has not demonstrated financial responsibility and sound management of his finances.

(i) The applicant has not adequately prepared to provide ongoing physical and emotional care to the child.

(j) The agency has, based on its evaluation of the applicant, concerns relating to the applicant's moral character, mental stability, or motivation for adopting a child.

(k) ~~[The]~~ *Except as otherwise provided in subsection 3, the* applicant has been convicted of a crime which involves harm to a child, or has a history, based on a substantiated investigation, of abusing or neglecting a child.

(l) *The applicant has a felony conviction for:*

(1) Child abuse or neglect;

(2) Spousal abuse;

(3) Any crime against children, including child pornography;

(4) Any crime involving violence, including rape, sexual assault or homicide, but not including other physical assault or battery; or

(5) Physical assault, battery or a drug-related offense, if the assault, battery or drug-related offense was committed within the last 5 years.

(m) The agency has concerns and reasonable doubts, based on any other relevant information, about the safety or well-being of the child, if the child is placed with the applicant.

3. A child-placing agency shall not, without the approval of the division, assist in the adoption of a child by a person who the agency determines has been convicted of one or more felonies or gross misdemeanors. *The division will not approve such an adoption if the applicant has been convicted of a felony described in paragraph (l) of subsection 3.* If the director of adoption of a child-placing agency recommends such an adoption, he ~~[must]~~ *shall* submit to the division a complete record and explanation of the situation. A child-placing agency may, without submitting the matter to the division, deny an application by such a person to adopt a child.

4. The child-placing agency shall notify the applicant in writing when the application has been approved or denied. If the application is denied, the notice must include the reason for the denial.

Sec. 10. NAC 127.270 is hereby amended to read as follows:

127.270 1. If a child-placing agency decides to place a child in a foster home, the agency shall:

(a) Select a foster home that is:

(1) Licensed pursuant to chapter 424 of NRS; and

(2) Appropriate for the child, based upon the emotional and physical needs of the child, and the religious beliefs of the child and his parents.

(b) Visit the foster home not less than monthly, and more frequently if necessary to satisfy the needs of the child or foster parents.

(c) Assist the foster parents in understanding and meeting the individual needs of the children in their care.

(d) Ensure that the child receives an appropriate education in accordance with Title 34 of NRS.

(e) Provide the child with opportunities to obtain religious training in accordance with the religious beliefs of the child and his parents.

(f) Encourage the biological parents of the child, if available, to visit the child on a continuing basis, unless the visits are clearly detrimental to the welfare of the child.

2. A child-placing agency is responsible for the health *and safety* of a child it places in foster care. The agency shall:

(a) Cause medical and dental examinations to be conducted upon placement of the child in foster care and not less than annually thereafter;

(b) Ensure that the child receives prompt treatment for any illnesses, defects, and deformities; and

(c) Take appropriate measures to correct remediable defects and deformities.

Sec. 11. NAC 127.350 is hereby amended to read as follows:

127.350 1. An adoptive parent may appeal the decision of the division to deny, reduce, or terminate assistance pursuant to NAC 127.340 by requesting a hearing with the hearing officer designated by the division. A request for a hearing must be made in writing to the hearing officer at 711 E. Fifth Street, Carson City, Nevada 89710. The request must be received by the hearing officer, or postmarked if mailed, not later than 13 calendar days after the date on which the written decision to deny, reduce, or terminate assistance is made. An applicant who fails to request timely a hearing waives his right to a hearing.

2. A hearing must be scheduled not later than 15 calendar days after the date on which the request for a hearing is received by the hearing officer. The hearing may, with good cause, be delayed if the hearing officer approves the delay. The hearing officer shall render a decision on the hearing within ~~5~~ 15 working days after the date of the hearing. The decision of the hearing officer must be provided in writing to the applicant not later than 7 days after the date on which the hearing officer renders the decision. ~~[The decision of the hearing officer is final and binding.]~~

3. A hearing which is held pursuant to this section will be conducted in accordance with chapter 233B of NRS.