

This rule was filed as 8 NMAC 26.3.

TITLE 8 SOCIAL SERVICES
CHAPTER 26 [FOSTER CARE AND ADOPTION]
PART 3 ADOPTION ACT REGULATIONS

8.26.3.1 ISSUING AGENCY: Children, Youth and Families Department, Protective Services Division.
[01/01/98; Recompiled 11/30/01]

8.26.3.2 SCOPE: Any person wishing to adopt a child, any adoptee and any person and/or agency party to an adoption in New Mexico.
[01/01/98; Recompiled 11/30/01]

8.26.3.3 STATUTORY AUTHORITY: The Adoption Act (hereafter Act): Section 32A-5-1 NMSA 1978 et seq. (Repl. Pamp. 1997).
[01/01/98; Recompiled 11/30/01]

8.26.3.4 DURATION: Permanent.
[01/01/98; Recompiled 11/30/01]

8.26.3.5 EFFECTIVE DATE: January 1, 1998 [unless a later date is cited at the end of a section].
[01/01/98; Recompiled 11/30/01]

8.26.3.6 OBJECTIVE: The purpose of these regulations is to supplement the act, and they shall be used in conjunction and consistent with the act.
[01/01/98; Recompiled 11/30/01]

8.26.3.7 DEFINITIONS:

- A. “Adoptee”** means any person who is the subject of an adoption petition.
- B. “Adoptee’s consent”** means a document signed by an adoptee whereby the adoptee agrees to be adopted by the petitioner.
- C. “Agency adoption”** means an adoption proceeding in which the adoptee is placed by a private or child placement agency.
- D. “Consent”** means a document signed by the biological parent whereby the parent agrees to the adoption of the parent’s child by another; or whereby the department, or an agency licensed by the department, agrees to the adoption of a child in its custody.
- E. “Counselor”** means a person or agency certified by the department to provide adoptive counseling in independent adoptions.
- F. “Custodial parent”** means the parent with whom the child resides and whose parental rights have not been terminated or are not being terminated.
- G. “Department”** means the children, youth and families department.
- H. “Department adoption”** means an adoption proceeding in which the adoptee is placed by the department.
- I. “Extended family member”** shall be defined by the law or custom of the Indian child’s tribe, consistent with the Indian Child Welfare Act (ICWA) or, in the absence of such law or custom, shall be a person who has reached the age of eighteen (18) and who is the Indian child’s grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin or stepparent.
- J. “Foreign born child”** means a child who was born in a country other than the United States of America (hereafter U.S.) and is not a U.S. citizen at the time the child is placed for adoption.
- K. “Indian child”** means any unmarried person who is under eighteen (18) years of age and is either a member of an Indian tribe or is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.
- L. “Indian child’s domicile”** means the place where the Indian child’s parent or Indian custodian resides permanently or intends to relocate after a temporary residence for employment, education or other reasons. The domicile of the unwed mother of an Indian child shall be the domicile of the Indian child.

M. “Indian child’s tribe” means the Indian tribe in which an Indian child is a member or is eligible for membership or, in the case of an Indian child who is a member or is eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the most significant contacts, to be determined in accordance with the bureau of Indian affairs’ (hereafter BIA) “Guidelines for State Courts - Indian Child Custody Proceedings.”

N. “Indian Child Welfare Act” (hereafter ICWA) means the Indian Child Welfare Act of 1978, 25 U.S.C. 1901 et seq.

O. “Indian tribe” means any Indian tribe, band, nation or other organized group or community of Indians recognized as eligible for the services provided to Indians by the secretary of the Interior because of their status as Indians, including any Alaska native village as defined in the Alaska Native Claims Settlement Act, 43 U.S.C. 1602(c).

P. “Investigator” means a person or agency who has been certified by the department to conduct adoptive studies or reports in independent adoptions.

Q. “List” refers to a document which lists the persons or agencies certified by the department as investigators or counselors.

R. “Non-custodial parent” means the parent with whom the child does not reside and whose parental rights have been terminated or are being terminated by the adoption.

S. “Reservation” means Indian country as defined in 18 U.S.C. 1151 and any lands not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation.

T. “Tribal court” means a court of an Indian nation, tribe or pueblo with jurisdiction over child custody proceedings.

[01/01/98; Recompiled 11/30/01]

8.26.3.8 RULES OF CONSTRUCTION:

A. The definitions in the act shall apply to the regulations.

B. References to the act: The Adoption Act Regulations (hereafter Regulations) shall reference the section of the act for which they are promulgated. Hereafter, all references to the act shall only reference the section in place of the full citation.

C. Format of the regulations: The format of the regulations follows the act. Additionally, the following special areas of adoption are included as Section 44 through 47 [now 8.26.3.44 NMAC through 8.26.3.47 NMAC] respectively:

- (1) adoption of an Indian child;
- (2) interstate compact on the placement of children;
- (3) adoption of a foreign born child; and
- (4) reproductive alternatives.

D. Words importing the singular number may be extended to several persons or things. Words importing the plural number may be applied to one person or thing. See NMSA 1978, Section 12-2-2.

E. The words “shall” and “will” are mandatory and “may” is permissive or discretionary. See Section 12-2-2 NMSA 1978.

F. Nothing in the regulations is intended to supersede any federal statute, compact or regulation. Reference to applicable federal statutes, compacts and regulations is necessary for adoptions involving a foreign born child, Indian child, interstate adoption, etc. Failure to comply with applicable federal statutes, compacts and regulations may invalidate an adoption decree.

[01/01/98; Recompiled 11/30/01]

8.26.3.9 TYPES OF ADOPTION:

A. There are three types of adoption in New Mexico: department adoptions, agency adoptions, and independent adoptions.

B. Different provisions of the act and regulations apply depending on the type of adoption.
[01/01/98; Recompiled 11/30/01]

8.26.3.10 APPLICATION OF THE ICWA: See Sections 32A-1-8, 32A-5-4, 32A-5-5 NMSA 1978 and Section 44 [now 8.26.3.44 NMAC] of these regulations.

[01/01/98; Recompiled 11/30/01]

8.26.3.11 SERVICE ON THE DEPARTMENT:

A. See Sections 32A-5-6(D) and 32A-5-7(B), (C) and (D) NMSA 1978.

B. The attorney for the petitioner shall provide to the clerk of the court a copy of the request for placement, petition for adoption, and decree of adoption at the time of filing of each pleading for service on the department by the clerk of the court. The attorney for petitioner shall also provide to the clerk of the court a stamped envelope addressed to the department as follows: Children, Youth and Families Department, Protective Services Division, Central Adoptions Unit, P.O. Drawer 5160, Santa Fe, NM 87502-5160.

C. The clerk of the court shall mail to the department a copy of the request for placement, petition for adoption and decree of adoption within one working day of the filing of each pleading.
[01/01/98; Recompiled 11/30/01]

8.26.3.12 CONFIDENTIALITY OF RECORDS PRIOR TO ENTRY OF DECREE:

A. See Section 32A-5-8 NMSA 1978.

B. ICWA intervenors:

(1) Access to confidential records: All ICWA intervenors shall have access to the confidential records in the adoption of an Indian child.

(2) Confidentiality: All ICWA intervenors shall comply with the confidentiality requirements of Section 32A-5-8 NMSA 1978.

C. Affidavit for release of parent information: Prior to the entry of a decree of adoption, the attorney for the petitioner shall file with the court on behalf of the consenting or relinquishing party an affidavit for release of parent information form.

D. In a termination of parental rights proceeding, the attorney for the petitioner shall attempt to obtain from the biological parent an affidavit for release of parent information form.

E. The release of parent information form is available through the local department office.
[01/01/98; Recompiled 11/30/01]

8.26.3.13 CASE CAPTION IN ALL ADOPTION PROCEEDINGS:

A. Form of caption: See Section 32A-5-9 NMSA 1978.

B. Clerk of the court: The clerk of the court shall refuse to file an adoption pleading which is improperly captioned. See Section 32A-5-7(A) NMSA 1978.
[01/01/98; Recompiled 11/30/01]

8.26.3.14 VENUE IN ALL ADOPTION PROCEEDINGS: See Section 32A-5-10 NMSA 1978.

[01/01/98; Recompiled 11/30/01]

8.26.3.15 WHO MAY BE ADOPTED; WHO MAY ADOPT:

A. See Section 32A-5-11 NMSA 1978.

B. Any child may be adopted.

C. A petition for adoption may be filed in New Mexico by any adult who meets one of the following criteria:

(1) Resident: The petitioner is a resident as defined in the act in Section 32A-5-3(S) NMSA 1978; or

(2) Non-resident: The petitioner may be a non-resident only if the child was placed by the department or a New Mexico licensed child placement agency and the adoptee is a resident of New Mexico or was born in New Mexico, but is less than six months of age.

D. Any individual who has been approved by the court as a suitable adoptive parent pursuant to the provisions of the Act may adopt. In determining the suitability of a prospective adoptive parent, stability of the petitioner's immediate family unit relationships should be emphasized. The recommended guideline for the duration of the family unit is two years prior to placement of the adoptee with the prospective adoptive family although in some circumstances a shorter period of time may be acceptable if approved by the court.

E. A married individual may adopt without the individual's spouse joining in the adoption if the non-joining spouse is the parent of the adoptee, or if the spouses are legally separated, or if the failure of the non-joining spouse is excused for reasonable cause as determined by the court.

[01/01/98; Recompiled 11/30/01]

8.26.3.16 PLACEMENT FOR ADOPTION:

A. See Section 32A-5-12 NMSA 1978.

B. Indian child: If the adoptee is an Indian child, also see Section 44.7 [now Subsection G of 8.26.3.44 NMAC] of these regulations.

C. Placement required prior to filing petition for adoption: Placement for adoption is required in all adoptions prior to the filing of the petition for adoption. See Section 32A-5-12 NMSA 1978.

D. Exceptions to placement in independent adoptions: Placement is not required in independent adoptions if the following circumstances exist:

(1) Stepparent exception: A stepparent shall comply with all of the provisions of the Act except as provided in Sections 32A-5-12 and 32A-5-32 NMSA 1978. See Section 33 [now 8.26.3.33 NMAC].

(2) Relative or person named in deceased parent's will exceptions: If the adoptee has resided for one year prior to the filing of the petition for adoption with a petitioner who is a relative of the adoptee within the fifth degree of consanguinity as defined by Section 32A-5-12C (2) NMSA 1978, or is a petitioner who was named in the adoptee's deceased parent's will, the petitioner shall comply with all the provisions of the act except as follows:

(a) placement including a pre-placement study unless ordered by the court;

(b) post-placement report unless ordered by the court; and

(c) the court may shorten or waive the ninety day waiting period from the filing of the petition for adoption and the entry of the decree of adoption required in Section 32A-5-36(F)(6) NMSA 1978.

E. Full disclosure: Prior to placement, full disclosure as defined in Section 32A-5-3(G) NMSA 1978 is required and the full disclosure form shall be completed. The current full disclosure form may be obtained from the department. An addendum to the pre-placement study shall be prepared providing full disclosure if the adoptee is identified after preparation of the pre-placement study. If additional full disclosure information is obtained after placement, full disclosure shall be made in the post-placement report. See Section 18.4 [now Subsection D of 8.26.3.18 NMAC].

(1) All full disclosure information is confidential and shall not be disclosed to anyone who is not a party to the adoption.

(2) All full disclosure documents are the property of the person providing the documents.

(3) If a prospective adoptive family decides not to accept the adoptive placement after full disclosure, the prospective adoptive family shall return all of the full disclosure documents provided to them and shall not disclose any of the full disclosure information.

F. Legal risk placement: There shall be no placement of an adoptee who is not legally free for adoption without informing the prospective adoptive parents that the child is not legally free for adoption, that the child may not necessarily become legally free for adoption, and that the child may be removed from the prospective adoptive parents if the adoptee does not become free for adoption. Prior to any "legal risk placement", the prospective adoptive parents shall sign a statement specifically describing the legal risk and by doing so, shall acknowledge that they have been informed of the legal risk.

G. Subsidy: In order for an adoptee to be eligible for adoption subsidy, the adoptee is required to be placed by the department or a New Mexico licensed child placement agency. See Section 32A-5-44(A) NMSA 1978.

[01/01/98; Recompiled 11/30/01]

8.26.3.17 INDEPENDENT ADOPTIONS:

A. See Section 32A-5-13 NMSA 1978.

B. Placement shall not occur prior to the petitioner obtaining a placement order from the court.

C. Procedure to obtain placement order:

(1) A request for placement shall be filed thirty (30) days prior to placement.

(2) The request for placement shall be served on the same persons upon whom the petition for adoption is served and in the same manner. See Sections 32A-5-7(B) and 32A-5-27 NMSA 1978.

(3) A pre-placement study shall be filed prior to a hearing on the request for placement.

(4) A hearing and the court decision on the request for placement shall occur within thirty days of the filing of the request for placement. For good cause shown, the court may shorten the time to twenty days and in the event of exigent circumstances, including premature birth, the court may shorten the time to five days. See Section 32A-5-13H NMSA 1978.

(5) In addition to the findings on the request for placement, the placement order shall include a finding that the pre-placement study complies with Section 32A-5-14 NMSA 1978 and Section 18 [now 8.26.3.18 NMAC].

D. Who may conduct adoptive counseling studies and reports: Only persons certified by the department shall be permitted to conduct adoptive counseling, studies and reports. Adoptive counseling narratives,

pre-placement studies and post-placement reports will not be accepted if the persons conducting these services are not certified by the department.

E. Certification of investigator and counselor in independent adoptions:

(1) Qualifications of investigator: To qualify as an investigator, the applicant shall:

(a) hold a master's of social work degree from a school of social work accredited by the council of social work education and be licensed by the New Mexico board of social work examiners or hold a master's degree from an accredited degree-granting institution in sociology, psychology, guidance and counseling or counseling or be licensed at the licensed professional clinical counsel level (L.P.C.C.) by the counseling and therapy practice board; and

(b) have two years paid, full-time experience in family evaluation and child development and behavior.

(2) Indian child investigator or counselor: If the adoptee is an Indian child, the investigator may be a person authorized by an Indian tribe to conduct adoptive studies or counseling by an Indian tribe.

(3) Qualifications of counselor: An individual providing counseling shall be a licensed psychologist, a licensed psychiatrist, a social worker licensed at the master's or independent level, a counselor or therapist licensed at the L.P.C.C. level; or by an agency. See Section 32A-5-22(G) NMSA 1978.

(4) Certification: In addition to meeting the qualifications specified in Section. 17.5.1 or 17.5.3 [now Paragraphs (1) or (3) of Subsection E of 8.26.3.17 NMAC] the individual shall be certified by the department and appear on the department's current list prior to conducting adoptive services. If the person preparing the adoptive services is out-of-state, such person shall attach a statement setting forth qualifications that are equivalent to those required of an investigator or counselor pursuant to the provisions of Sections 32A-5-13 and 32A-5-22 NMSA 1978 respectively and the regulations.

(5) Application process: The applicant shall complete the department's application form and attach all documentation required to verify the applicant's qualifications. The applicant shall include at a minimum:

(a) certified copies of college transcripts;

(b) resume which shall specify the applicant's experience in family evaluation and child behavior and development;

(c) copies of relevant licenses or certificates received; and

(d) results of the federal criminal records check.

(i) Filing false documentation: Persons filing false documentation with the department are in violation of the Act and subject to the penalties provided in Section 32A-5-42(B) NMSA 1978.

(ii) Application fee: The amount of the fee shall be specified on the application form.

(6) Individuals who are not eligible for certification are:

(a) persons who are currently employed by the department;

(b) persons who are employed full-time or part-time by a New Mexico licensed child placement agency if the agency is providing contract adoptive services for the department; and

(c) persons subject to a legal disability with respect to certification.

(7) Certification process:

(a) The department shall be responsible for reviewing the application form and the documentation attached to the application and making a decision regarding certification of the applicant's qualifications within ninety calendar days of the filing of the application. If the applicant's qualifications are satisfactory, the department shall certify the person as an investigator or counselor and place the applicant's name, address, telephone number and service area on the list.

(b) If the department is unable to determine if the applicant meets the minimum requirements to be certified, the department shall request the applicant to submit additional information. The ninety day review period shall commence upon receipt of the completed application and all of the documentation requested by the department.

(c) The department shall notify the applicant in writing of the applicant's certification or non-certification.

(8) Continuing education: Certified investigators and counselors shall comply with continuing education requirements prescribed by the department.

(9) Maintenance of list: The department shall update the list every six months. The effective time period of the list shall be specified on the list. The list of certified counselors shall be obtained by requesting it in writing from the department at the address provided in Section 11.2 [now Subsection B of 8.26.3.11 NMAC].

(10) Deletion of investigator or counselor from list:

(a) For good cause, the department shall delete the investigator or counselor from the list. Good cause shall include failure to comply with the Act, regulations or written department protocol.

(b) If the department deletes an investigator or counselor from the list, the department shall notify, within ten days, the investigator or counselor that he/she has been deleted from the list and the reasons for the deletion.

(c) Upon receipt of notice of deletion from the list, the investigator or counselor shall not conduct adoptive services in independent adoptions and shall notify any individual requesting such services from the investigator or counselor that the investigator or counselor is no longer certified. Failure to provide such notification may result in penalties pursuant to Section 32A-5-42 NMSA 1978.

(11) Representations to the public:

(a) The investigator or counselor shall at all times clearly represent to persons requesting the investigator's or counselor's services that the investigator or counselor is acting in his/her independent capacity as an investigator or counselor in independent adoptions.

(b) If the investigator or counselor also provides adoptive services as an employee of a New Mexico licensed agency, he/she shall not use the letterhead, business cards, etc. of the child placement agency. Furthermore, an investigator or counselor employed by an agency shall not provide services in his/her independent capacity from the premises of the child placement agency unless the biological parent or the prospective adoptive parent signs a statement of understanding that the investigator or counselor is acting in his/her independent capacity.

(12) Appeal process: Any applicant wishing to appeal the certification decision of the department shall appeal to the department at the address provided in Section 11.2 [now Subsection B of 8.26.3.11 NMAC]. The appeal process is specified in the department's protective services division's policy and procedure manual. The department shall provide a copy of the applicable policy or procedure upon request of the appellant.
[01/01/98; Recompiled 11/30/01]

8.26.3.18 PRE-PLACEMENT STUDY:

A. See Section 32A-5-14 NMSA 1978.

B. In addition to the requirements of Section 32A-5-14 NMSA 1978, the pre-placement study shall include the following:

(1) log of contacts made designating the nature of the contact (e.g., telephone, office visit, etc.) and duration of each significant contact;

(2) general impression of the family;

(3) motivation to adopt;

(4) exploration of ethnic considerations including social and cultural issues;

(5) if the adoptee is an Indian child, a statement of compliance with the ICWA placement preferences pursuant to Section 32A-5-5 NMSA 1978 and Section 44.7 [now Subsection G of 8.26.3.44 NMAC] of these regulations, or efforts made to comply with same;

(6) family background assessment;

(7) courtship and marriage;

(8) other significant interpersonal relationships;

(9) children in the home;

(10) assessment of parenting skills, knowledge and experience;

(11) family's ability to cope with crises;

(12) caring for a special needs child, if applicable;

(13) financial issues and status;

(14) physical and social home environment and neighborhood environment;

(15) religious philosophy and practices;

(16) health issues that may impact the family's ability to care for an adoptee;

(17) an evaluation of the family in relation to the type of child desired or to be placed;

(18) a statement of the status of the criminal records check; and

(19) a recommendation by the preparer of the pre-placement study including the reasons for approval or denial of the adoptive family.

(20) the preplacement study shall be signed and dated by the investigator. In department or agency adoptions, the investigator's supervisor shall also sign the pre-placement study if the investigator does not have a master's degree.

C. Only a pre-placement study which has been prepared or updated within one year immediately prior to the date of placement shall be accepted.

D. Full disclosure:

(1) Reasonable efforts made shall be used to obtain all available information for full disclosure. At a minimum, reasonable efforts shall include contact, or documented attempts to contact, the following:

- (a) biological parent;
- (b) health providers, both physical and mental;
- (c) educational providers; and
- (d) prior placements providers.

(2) Confidentiality: The confidentiality provisions of the Act apply to information obtained for purposes of meeting full disclosure requirements. See Section 32A-5-8 NMSA 1978.

(3) Biological parents shall execute any and all releases necessary to accomplish and satisfy requirements of full disclosure.

(4) Prior to placement of the child for the purpose of adoption, the department, agency, investigator or petitioner's attorney shall provide full disclosure of all available information about the child including:

- (a) health history, mental and physical;
- (b) hospitalization;
- (c) medication history;
- (d) genetic history;
- (e) physical descriptions;
- (f) social background information;
- (g) placements;
- (h) educational background;
- (i) incidents of sexual or physical abuse, neglect; and
- (j) behavioral characteristics.

(5) If a request for placement is not required by the Act, the full disclosure form shall be completed and attached to the request for placement or to the petition for adoption.

(6) Continuing duty to provide full disclosure: If all of the full disclosure information is not available at the time of placement, the agency, department, investigator or petitioner's attorney shall continue to attempt to obtain such information after placement and shall provide such information to the adoptive parent as it becomes available up to the time of entry of the decree of adoption. If additional relevant information is obtained after the entry of the decree of adoption, it shall be provided to the adoptive parent, if known, and to the department.

E. Required signatures: The pre-placement study shall be signed and dated by the preparer of the study. If the study is prepared by the department or an agency, the study shall also be signed and dated by the preparer's department supervisor or the agency's executive director.

F. Criminal records check: To obtain a criminal records check, the following procedure shall be followed:

(1) Fingerprint cards shall be obtained from the department at the address provided in Section 11.2 [now Subsection B of 8.26.3.11 NMAC].

(2) The name of the requesting person (department, agency, investigator or petitioner) and the type of adoption (department, agency or independent) shall be typed or printed on the back side of each fingerprint card.

(3) Two completed cards are required for each individual.

(4) Fingerprinting may only be done by qualified personnel, generally at the office of local police, sheriffs, city and county jails, and at some district offices of the New Mexico department of public safety.

(5) A fee may be charged by these agencies for taking the fingerprints.

(6) After the fingerprints have been taken, a set of the fingerprint cards and a separate cashier check or money order for each person requesting the criminal records check (e.g., two checks for a couple) made payable to the department of public safety shall be mailed to: Department of Public Safety, Law Enforcement, Records Bureau, P.O. Box 162, Santa Fe, NM 87504.

(7) The results of the federal and state criminal records check shall be sent to the department, a state agency authorized by law for such purposes; and

(8) The department shall forward the results of the federal and state criminal records checks to the requesting person and to the court if an adoption proceeding has been filed.

G. Foreign born substitute criminal records check: In any adoption involving a foreign-born child, the U.S. department of immigration form providing the results of the petitioner's criminal records check (currently form I-171) may be submitted in lieu of the criminal records check.

H. Duration of criminal records check: A criminal records check shall be valid for twenty-four months.

I. Completion of criminal records check: The criminal records check on each petitioner shall be completed, and the information made available to all interested parties prior to the entry of a final decree of adoption.

[01/01/98; Recompiled 11/30/01]

8.26.3.19 TERMINATION OF PARENTAL RIGHTS:

A. See Sections 32A-5-15 and 32A-5-16 NMSA 1978.

B. Initiation of termination of parental rights action: A termination of parental rights (hereafter TPR) action may be initiated by:

(1) a separate action prior to the filing of the petition for adoption;

(2) simultaneously with the petition for adoption; or

(3) subsequent to the filing of the petition for adoption by motion in the adoption proceeding.

C. A TPR action shall be served in accordance with the rules of civil procedure for the district courts for service of a civil action in this state with the exception that the department may be served by certified mail.

D. Full disclosure: Reasonable efforts shall be made to obtain full disclosure in a termination of parental rights proceeding.

E. Indian child: If the adoptee is an Indian child, also see Section 44 [now 8.26.3.44 NMAC].
[01/01/98; Recompiled 11/30/01]

8.26.3.20 PERSONS WHOSE CONSENTS OR RELINQUISHMENTS ARE REQUIRED:

A. See Section 32A-5-17.

B. An adoptee's consent is required if the adoptee has reached the age of ten years of age or older.
[01/01/98; Recompiled 11/30/01]

8.26.3.21 IMPLIED CONSENT OR RELINQUISHMENT:

A. See Section 32A-5-18 NMSA 1978.

B. Manner of service of notice of hearing for implied consent or relinquishment:

(1) Notice: The notice of hearing required for the court to imply a consent or relinquishment pursuant to Section 32A-5-18(B) NMSA 1978 may be served with the petition for adoption or anytime thereafter pursuant to the Rules of Civil Procedure for the district courts. Consent or relinquishment shall not be implied unless the notice of hearing is first served on the parent.

(2) Maintenance of confidentiality: Confidentiality may be preserved by using only first initials to identify the petitioner.

[01/01/98; Recompiled 11/30/01]

8.26.3.22 PERSONS WHOSE CONSENTS OR RELINQUISHMENTS ARE NOT REQUIRED:

A. See Section 32A-5-19 NMSA 1978 NMSA 1978.

B. Notice of the petition for adoption shall not be served on any person whose consent or relinquishment is **not** required pursuant to Section 32A-5-19 NMSA 1978.

[01/01/98; Recompiled 11/30/01]

8.26.3.23 PUTATIVE FATHER REGISTRY:

A. See Section 32A-5-20 NMSA 1978.

B. Father's identity unknown: If the mother alleges that the identity of the father is unknown, the department, agency, investigator or the petitioner's attorney shall obtain an affidavit signed by the mother stating the circumstances which caused the lack of knowledge of the father's identity.

C. Father registration: Any person who desires to register with the putative father registry may contact the department of health (hereafter DOH) as follows: Department of Health, Bureau of Vital Records and Health Statistics, P.O. Box 26110, Santa Fe, New Mexico 87502. DOH may promulgate regulations and forms at any time. If regulations and forms have been promulgated by DOH, the applicant shall comply with such regulations and forms. If DOH has not promulgated a father registration form, the sample father registry form is available through the local department office.

D. Registry inquiry: If DOH has not issued a form for inquiry as to whether a putative father has registered, the sample putative father registry Inquiry form is available through the local department office and may be used to request information from DOH.

[01/01/98; Recompiled 11/30/01]

8.26.3.24 FORM OF CONSENT OR RELINQUISHMENT:

- A.** See Section 32A-5-21 NMSA 1978.
 - B.** Parent's consent or relinquishment: A consent or relinquishment form executed by a parent shall be in compliance with Section 32A-5-21(A) NMSA 1978. This form is available through the local department office.
 - C.** Adoptee's consent: An adoptee who has reached the age of ten years of age or older shall consent to the adoption. The adoptee's consent shall be in compliance with Section 32A-5-21(B) NMSA 1978 and Section 26.2 [now Subsection B of 8.26.3.26 NMAC]. This form is available through the local department office.
 - D.** Department or agency consent: A consent to adoption by the department or an agency shall be in compliance with Section 32A-5-21(E) NMSA 1978.
 - E.** Indian child: If an adoptee is an Indian child, also see Section 44 [now 8.26.3.44 NMAC] of these regulations.
- [01/01/98; Recompiled 11/30/01]

8.26.3.25 COUNSELING:

- A.** See Section 32A-5-22 NMSA 1978.
- B.** Who shall provide counseling:
 - (1) Department adoption: A department employee designated by the department to provide counseling shall provide adoptive counseling. The designated counselor or the person designated to supervise the counseling shall:
 - (a) hold a master's of social work degree from a school of social work accredited by the council of social work education and be licensed by the New Mexico board of social work examiners or hold a master's degree from an accredited degree-granting institution in sociology, psychology, guidance and counseling or be licensed as a licensed professional clinical counselor (L.P.C.C.) by the counseling and therapy practice board; and
 - (b) have two years paid, full-time experience in family evaluation and child development and behavior.
 - (2) Agency adoption: An agency employee designated by the agency to provide counseling shall provide adoptive counseling. The designated counselor or the person designated to supervise the counseling shall have the same qualifications as described in Section. 25.2.1 [now Paragraph (1) of Subsection B of 8.26.3.25 NMAC].
 - (3) Independent adoption: See Sections 17.5.3 and 17.5.4 [now Paragraphs (3) and (4) of Subsection E of 8.26.3.17 NMAC]
- C.** When counseling shall occur: The consent or relinquishment shall not be taken on the same day as the counseling session unless extraordinary circumstances exist and are documented in the counseling narrative.
- D.** Counseling in person: All counseling shall be conducted in person.
- E.** Counseling narratives: A separate counseling narrative shall be prepared for each person counseled and attached to the person's consent or relinquishment.
- F.** Parent counseling: Any parent whose consent or relinquishment is required pursuant to Section 32A-5-17 NMSA 1978 shall receive counseling concerning adoption and its alternatives from a person with qualifications specified in Section 32A-5-22(G) NMSA 1978 and Sections 17.5.3 and 17.5.4 [now Paragraphs (3) and (4) of Subsection E of 8.26.3.17 NMAC].
 - (1) Minor biological parent: For a biological parent under the age of eighteen (18) years, in addition to the above-specified requirements, counseling shall be given on at least two separate occasions and at least one of the sessions shall be conducted without the presence of the biological parent's parent, guardian or the prospective adoptive parent.
 - (2) Parent counseling narrative: The narrative shall contain:
 - (a) the date and duration of each counseling session;
 - (b) a description of alternatives discussed with the parent, which shall include at a minimum the advantages and disadvantages of the following options:
 - (i) keeping and parenting the child;
 - (ii) temporary custody with, or support from, extended family or friends;
 - (iii) voluntary foster care;
 - (iv) abortion, by referral if necessary; and
 - (v) state aid.

- (c) the reason the parent wishes to relinquish or consent to the adoption of the adoptee;
- (d) the response of the parent regarding the receipt or promise of financial assistance or services related to the adoption, which shall include the following:
 - (i) whether payments were made to third party vendors, i.e., landlord, utility company, grocery store, etc;
 - (ii) whether the amounts were reasonably practical within the prevailing costs of the community of residence;
 - (iii) whether assistance was provided in areas other than counseling, including but not limited to legal services, medical care, travel related to necessary services, living expenses for the biological mother and her dependent children for a reasonable time before the birth of her child and not more than six weeks after the birth (see Section 32A-5-34 NMSA 1978 for permissible payments); and
 - (iv) whether repayment of these expenses is a consideration for the parent in completion of the relinquishment or consent;
- (e) the response of the parent to the counselor's inquiry regarding Indian heritage;
- (f) the response of the parent to the counselor's inquiry regarding ethnic heritage;
- (g) the parent's desires as to the kind of adoptive family sought;
- (h) if the parent has selected a prospective adoptive family, the parent's description of the specific circumstances which led to the identification and selection of the prospective adoptive family which shall include the following:
 - (i) reasons why the parent made the selection; and
 - (ii) the name, role and relationship of any third person who assisted in the identification and selection of the prospective adoptive parents;
- (i) the response of the parent regarding:
 - (i) counseling being provided in his/her primary language;
 - (ii) relinquishment or consent being obtained without threats or coercion from any person;
 - (iii) irrevocability of relinquishment or consent;
 - (iv) consequences of adoption including ramifications of divorce or death; and
 - (v) awareness of their right to legal counsel.
- (3) Signatures: The counseling narrative shall be signed and dated by both the counselor and the parent being counseled.
- (4) Signatures in department or agency adoptions: Department or agency adoptions, the counselor's supervisor shall also sign the counseling narrative if the counselor does not have the required master's degree.
- G.** Stepparent adoption counseling: See Section 33.5 [now Subsection E of 8.26.3.33 NMAC].
- H.** Adoptee counseling: In all adoptions where the adoptee is ten years of age or older, the adoptee shall be counseled in compliance with Section 32A-5-22(C)(1) NMSA 1978.
- I.** Adoptee counseling narrative:
 - (1) The counseling narrative for the adoptee shall comply with the requirements specified in Section 32A-5-22(C)(1) NMSA 1978. Additionally, the counselor shall inform the child prior to counseling that the narrative shall contain:
 - (a) the date and duration of each counseling session;
 - (b) alternatives to adoption discussed;
 - (c) consequences of adoption including inheritance, death of a parent, loss of government benefits and divorce;
 - (d) description of relationship with parent or legal custodian;
 - (e) description of relationship with prospective adoptive parent;
 - (f) desires of the child regarding adoption;
 - (g) discussion of child's name after adoption; and
 - (h) desires of the child regarding post-adoption contact, if any, with the parent or other family members.
 - (2) Counselor's recommendation: If the counselor has significant concerns about the adoption, the counselor shall prepare a separate statement entitled counseling narrative recommendation to be submitted to the court and the department stating the counselor's concerns and any recommendations the counselor may have such as additional counseling and the child's need for legal advice or appointment of a guardian ad litem.
 - (3) Signatures: The counseling narrative shall be signed and dated by both the counselor and the adoptee.

[01/01/98; Recompiled 11/30/01]

8.26.3.26 PERSONS WHO MAY TAKE CONSENTS OR RELINQUISHMENTS:

- A.** See Section 32A-5-23 NMSA 1978.
 - B.** Adoptee consents: In department adoptions, the adoptee's consent shall be executed before an employee appointed by the department to take an adoptee's consent.
- [01/01/98; Recompiled 11/30/01]

8.26.3.27 RELINQUISHMENTS TO DEPARTMENT: See Section 32A-5-24 NMSA 1978 and Section 34.2 [now Subsection B of 8.26.3.34 NMAC].
[01/01/98; Recompiled 11/30/01]

8.26.3.28 PETITION FOR ADOPTION:

- A.** Time of filing: See Section 32A-5-25 NMSA 1978.
 - B.** Petition content: See Section 32A-5-26 NMSA 1978.
 - C.** Notice of petition: See Section 32A-5-27 NMSA 1978. Failure to properly comply with notice requirements may result in an invalid adoption decree.
 - D.** Indian child: If the adoptee is an Indian child, see Section 44 [now 8.26.3.44 NMAC].
- [01/01/98; Recompiled 11/30/01]

8.26.3.29 RESPONSE TO PETITION: See Section 32A-5-28 NMSA 1978.
[01/01/98; Recompiled 11/30/01]

8.26.3.30 CUSTODY PENDING DECREE: See Section 32A-5-29 NMSA 1978.
[01/01/98; Recompiled 11/30/01]

8.26.3.31 REMOVAL OF ADOPTEE FROM THE COUNTY:

- A.** See Section 32A-5-30 NMSA 1978.
 - B.** When the petitioner resides in a county in New Mexico other than the county in which the petition for adoption is filed, or in a state other than New Mexico, or if the adoptee will be absent from the county in which the petition for adoption is pending for more than fifteen days, a court order must be obtained recognizing such out of state residence and/or permitting absence from the county in which the petition for adoption is filed.
 - C.** A sample motion for an order of residence and a sample order of residence are available through the local department office.
- [01/01/98; Recompiled 11/30/01]

8.26.3.32 POST-PLACEMENT SERVICES AND THE POST-PLACEMENT REPORT:

- A.** See Section 32A-5-31 NMSA 1978.
 - B.** Post-placement services:
 - (1) Appropriate post-placement services shall be provided to the adoptee and the prospective adoptive family from the time of the child's placement until the post-placement report is filed.
 - (2) At a minimum, the following services shall be provided:
 - (a) contact shall be made with the prospective adoptive family personally or by telephone within forty-eight hours after placement;
 - (b) a home visit shall be made within three working days of placement; and
 - (c) additional visits shall be made every other month thereafter until the post-placement report is filed.
- [01/01/98; Recompiled 11/30/01]

8.26.3.33 STEPPARENT ADOPTIONS:

- A.** See Section 32A-5-32 NMSA 1978.
- B.** Who shall file a petition in a stepparent adoption: The stepparent with whom the adoptee has resided for at least one year since the stepparent's marriage to the adoptee's custodial parent.
- C.** Stepparent adoption exceptions: The stepparent shall comply with the provisions of the act, except as follows:
 - (1) placement;

- (2) pre-placement study or post-placement report unless ordered by the court; and
- (3) report of fees and charges to the court unless ordered by the court.

D. Consents: The consent of the non-custodial parent, the custodial parent, and the adoptee if he/she ten years of age or older, are required in all stepparent adoptions except in those cases where the non-custodial parent's parental rights may or have been terminated involuntarily as provided in the Act.

E. Counseling:

- (1) See Section 32A-5-22 NMSA 1978 and Section 25 [now 8.26.3.25 NMAC].

(2) When counseling is required for the stepparent and custodial parent: When the adoptee has lived with the stepparent for more than one year but less than two years since the stepparent's marriage to the custodial parent, counseling shall be required for both the stepparent and the custodial parent pursuant to Section 32A-5-22(C)(1) NMSA 1978. When the adoptee has lived with the stepparent for more than two years since the stepparent married the custodial parent, neither the custodial parent nor the stepparent shall be required to receive counseling, but they should be encouraged to receive counseling.

(3) Non-custodial parent counseling: The non-custodial parent shall receive counseling regardless of the duration of the stepparent marriage.

(4) Non-custodial parent's counseling narrative: The non-custodial parent who is consenting to the adoption, and whose parental rights will be terminated by the adoption, shall be counseled and his/her counseling narrative shall include:

- (a) the date and duration of each counseling session;
- (b) a description of the counseling session which shall include at a minimum the advantages and disadvantages of the adoption as follows:
 - (i) motivation for the consent;
 - (ii) ethnic consideration, if any;
 - (iii) the nature and characteristics of the relationship between the stepparent and the adoptee;
 - (iv) the nature and characteristics of relationship of the custodial parent and the adoptee;
 - (v) the nature and characteristics of relationship of the non-custodial parent and the adoptee;
 - (vi) the nature and characteristics of relationship of the stepparent and the custodial parent;
 - (vii) problems which may arise and which are anticipated from the adoptee's loss of a parent;
 - (viii) open adoption issues such as adoptee contact or visitation with the non-custodial parent;
 - (ix) consideration of grandparent visitation rights;
 - (x) the fact that the adoption is a final decision that is legally binding even in the event the custodial parent and stepparent divorce or one of them dies; and
 - (xi) legal consequences, such as waiver of child support obligation and loss of inheritance rights.
- (c) The counseling narrative shall be signed and dated by the non-custodial parent and the counselor.

(5) Custodial parent counseling: In addition to being counseled regarding the alternatives to adoption and the consequences of adoption, the custodial parent shall be counseled regarding the effects of adoption on child custody and child support.

(6) Custodial parent's counseling narrative: The custodial parent shall be counseled except as provided in Section 33.5.2 [now Paragraph (2) of Subsection E of 8.25.3.33 NMAC]. The narrative shall contain:

- (a) the date and duration of each counseling session;
- (b) a description of the content of the counseling session which shall include the advantages and disadvantages of the adoption such as, but not limited to, the following:
 - (i) motivation for the adoption;
 - (ii) ethnic consideration, if any;
 - (iii) right to seek independent legal counsel to clarify legal ramifications;
 - (iv) the nature and characteristics of relationship of the stepparent and the custodial parent;
 - (v) the nature and characteristics of relationship of the stepparent and the adoptee;

(vi) the nature and characteristics of relationship of the non-custodial parent and the adoptee;

(vii) social/medical history information known regarding the non-custodial parent;

(viii) the response of the parent to the counselor's inquiry regarding Indian heritage;

(ix) issues raised by the adoptee during the counseling session; and

(x) Concerns of the counselor, if any, regarding the appropriateness of the adoption.

(c) The counseling narrative shall be signed by the custodial parent and the counselor.

(7) Stepparent's counseling narrative: The stepparent who desires to adopt shall be counseled except as provided in Section 33.5.2 [now Paragraph (2) of Subsection E of 8.26.3.33 NMAC] of these regulations. The narrative shall contain:

(a) the date and duration of each counseling session;

(b) a description of the counseling session which shall include the advantages and disadvantages of the adoption such as, but not limited to, the following:

(i) motivation for the adoption;

(ii) ethnic consideration, if any;

(iii) the adoptee's social, education and health history;

(iv) the nature and characteristics of relationship of the stepparent and the adoptee;

(v) the nature and characteristics of relationship of the stepparent and custodial parent;

(vi) problems which may arise from the adoptee's loss of a parent;

(vii) open adoption issues such as adoptee contact or visitation with the consenting parent;

(viii) consideration of grandparent visitation rights; and

(ix) the fact that the adoption is a final decision that is legally binding even in the event of dissolution of marriage or death of his/her spouse.

(c) The counseling narrative shall be signed and dated by the stepparent and the counselor.

(8) When counseling is required for the adoptee: If the adoptee has reached the age of ten years of age or older, the adoptee shall receive counseling in all stepparent adoptions pursuant to Section 32A-5-22(C)(1) NMSA 1978 and Section 25.8 [now Subsection H of 8.26.3.25 NMAC].

(9) Adoptee's counseling narrative: See Section 32A-5-22(C)(1) NMSA 1978 and Sections 25.9 [now Subsection I of 8.26.3.25 NMAC].

F. Fingerprinting: In all stepparent adoptions, the stepparent shall obtain a criminal records check pursuant to Section 32A-5-14(A)(8), Section 32A-5-32(B)(1) NMSA 1978 and Section 18.8 [now Subsection H of 8.26.3.18 NMAC].

[01/01/98; Recompiled 11/30/01]

8.26.3.34 APPOINTMENT OF GUARDIAN AD LITEM FOR ADOPTEE:

A. See Sections 32A-5-24, 32A-5-33 and 32A-5-35 NMSA 1978.

B. Mandatory appointment of guardian ad litem: A guardian ad litem shall be appointed for an adoptee when:

(1) an adoptee is being relinquished to the department and the relinquishment is not being taken in an abuse and neglect proceeding or in contemplation of an adoption;

(2) the adoption is contested; or

(3) it is an open adoption and it is contemplated that there will be visitation between the biological family and the adoptee.

C. Discretionary appointment of guardian ad litem: The court may appoint a guardian ad litem for the adoptee at any time in any adoption proceeding upon the motion of any party or upon the court's own motion.

[01/01/98; Recompiled 11/30/01]

8.26.3.35 FEES AND CHARGES:

A. See Section 32A-5-34 NMSA 1978.

B. Reproductive alternatives: See Section 47 [now 8.26.3.47 NMAC]. A biological mother who is impregnated by in vitro fertilization or artificial insemination may be paid expenses of the pregnancy as provided in Section 32A-5-34.

[01/01/98; Recompiled 11/30/01]

8.26.3.36 OPEN ADOPTIONS: See Section 32A-5-35 NMSA 1978 and Section 34.2 c [now Paragraph (3) of Subsection B of 8.26.3.34 NMAC] of these regulations.
[01/01/98; Recompiled 11/30/01]

8.26.3.37 ADJUDICATION; DISPOSITION; DECREE OF ADOPTION:

A. Generally: See Section 32A-5-36 NMSA 1978.
B. Indian child: If the adoptee is an Indian child, also see Section 44 [now 8.26.3.44 NMAC] of these regulations.
[01/01/98; Recompiled 11/30/01]

8.26.3.38 STATUS OF ADOPTEE AND PETITIONER UPON ENTRY OF DECREE OF ADOPTION: See Section 32A-5-37 NMSA 1978.
[01/01/98; Recompiled 11/30/01]

8.26.3.39 BIRTH CERTIFICATES: See Sections 32A-5-7(F) and 32A-5-38 NMSA 1978.
[01/01/98; Recompiled 11/30/01]

8.26.3.40 RECOGNITION OF FOREIGN DECREES:

A. See Section 32A-5-39 and NMSA 1978, Section 39-4A-2 NMSA 1978.
B. Full faith and credit: The judgments of other states or of a tribal court of an Indian nation, tribe or pueblo terminating parental rights or establishing the relationship of parent and child by adoption shall be recognized by filing a certified copy of such judgment with the court clerk and taking such additional action as may be required by applicable law and court rules.
C. Comity: Decrees of foreign countries terminating parental rights or establishing the relationship of parent and child by adoption shall be recognized and enforced in accordance with applicable laws and rules of court.
 (1) A petition for recognition of such decree shall be filed with the court.
 (2) Authentication shall be established by attaching a certified copy of such decree to the petition for recognition or by providing the court with other evidence of authentication satisfactory to the court.
 (3) Recognition of a foreign decree does not waive any requirements that may be imposed by the immigration and naturalization service (hereafter INS) for the adoptee to remain in the U.S.
[01/01/98; Recompiled 11/30/01]

8.26.3.41 POST-DECREE ACCESS TO RECORDS:

A. See Sections 32A-5-40 and 32A-5-41 NMSA 1978.
B. Confidentiality of post-decree records: After the decree of adoption has been entered, all court files containing records filed with the court or the department in the adoption proceeding shall remain confidential and withheld from public inspection except as provided in the Act and regulations.
C. Procedure for access to post-decree records by an adult adoptee, biological parent of an adult adoptee, sibling of an adoptee, or adoptive parent of a minor adoptee:
 (1) Existence of record inquiry to the department: The party seeking access to the records shall first inquire of the department in writing whether a record of an adoptee's adoption is on file with the department. The adoption inquiry form is available through the local department office. The inquiry shall be forwarded to the department's central adoptions unit at the address specified in Section 11.2 [now Subsection B of 8.26.3.11 NMAC].
 (2) Non-identifying information:
 (a) Non-identifying information may be obtained without a court order by submitting to the department's central adoptions unit a written request, with the requesting person's signature notarized. See Section 11.2 [now Subsection B of 8.26.3.11 NMAC].
 (b) Non-identifying information is limited to the following:
 (i) the health and medical histories of the adoptee's biological parents;
 (ii) the health and medical history of the adoptee;
 (iii) the adoptee's general family background, including ancestral information, without name references or geographical designations;
 (iv) if the adoptee is an Indian child, tribal information;
 (v) physical descriptions of the adoptee and the adoptee's biological parents; and
 (vi) the length of time the adoptee was in the care and custody of any person other than the adoptive parents.

(3) Identifying information: Identifying information may be obtained without a court order if the person about whom the information is sought has signed and filed with the department or the court a release of identifying information.

(a) Request for identifying information: A request for identifying information shall be made in writing to the department's central adoptions unit and the requesting person's signature shall be notarized.

(b) Affidavit permitting release of identifying information: If the party about whom the identifying information is being requested has filed a statement agreeing to the release of identifying information, the department shall release identifying information.

(c) Affidavit refusing release of identifying information: If the party about whom the identifying information is being requested has filed a statement indicating that no identifying information shall be released, the department shall not release any identifying information. Additionally, the department shall notify the requesting party that the party about whom the identifying information is sought has filed an affidavit requesting that no identifying information be released.

(d) No affidavit on file: If the party about whom the identifying information is requested has not filed any statement regarding release of identifying information, the department shall not release any identifying information. Additionally, the department shall notify the requesting party that the party about whom the identifying information is sought has not filed any statement regarding release of identifying information.

(4) Application to the court for release of identifying information:

(a) Petition for appointment of confidential intermediary: If there is nothing in the department files stating whether the party about whom the identifying information is being requested is willing or unwilling to release his/her identity, the requesting person may petition the court pursuant to Section 32A-5-41 NMSA 1978 for appointment of a confidential intermediary.

(b) Confidential intermediary duties: Upon appointment, the confidential intermediary shall:

(i) Review court files: Check the court files for an affidavit regarding release of identifying information.

(ii) Search and contact: If such an affidavit does not exist, the confidential intermediary shall make a reasonable search for and discreetly contact the person about whom the identifying information is being requested to ascertain whether such person is willing to have identifying information released to the petitioner or is willing to meet or communicate with the petitioner. The confidential intermediary shall only describe the petitioner in general, non-identifying terms. If the party about whom the identifying information is sought agrees to the release of identifying information or to meet or communicate with the petitioner, the confidential intermediary shall proceed as provided in Section 32A-5-41(E) NMSA 1978. If the party about whom the identifying information is sought refuses to release identifying information, the confidential intermediary shall inform the petitioner and the petitioner may withdraw the petition or request the court to release identifying information for good cause.

(c) A confidential intermediary cannot gain client identifying information from other sources, such as the Internet, without prior court approval as provided in Section 32A-5-41 NMSA 1978.

(d) Release of identifying information for good cause: If there is a statement on file with the department or the court refusing to release identifying information, or the party refuses the release of identifying information when contacted by the confidential intermediary, the petitioner may petition the court for release of identifying information for good cause.

D. Filing of statement regarding release of identifying information: After the entry of the final decree, the adult adoptee or the biological parent of the adult adoptee may file an affidavit at any time for release of identifying information or may change his/her position regarding the release of identifying information. The most recent affidavit supersedes all prior affidavits.

[01/01/98; Recompiled 11/30/01]

8.26.3.42 PENALTIES: See Section 32A-5-42 NMSA 1978.

[01/01/98; Recompiled 11/30/01]

8.26.3.43 SUBSIDIZED ADOPTIONS:

A. See Section 32A-5-43 through 32A-5-45 NMSA 1978.

B. Purpose: Adoption subsidy is a program to assist families adopting a special needs child after they have exhausted the resources of private insurance, medicaid and other applicable assistance payments. All adoption subsidy ceases upon the child's eighteenth birthday.

C. Types of subsidy:

(1) Federal IV-E subsidy: An adoptee in the department's or an agency's custody may be eligible for federal IV-E subsidy pursuant to the Adoption Assistance and Child Welfare Act of 1980, 42 U.S.C. 670 et seq.

(2) State subsidy: A state-funded subsidy is only available for a special needs child in the department's custody when the adoptee is not eligible for federal IV-E subsidy and the adoptive family's financial circumstances meet the department's "means" test.

D. Eligibility for federal IV-E subsidy:

(1) Special needs required: To be eligible for adoption subsidy for ongoing assistance, medical assistance, special services or non-recurring expenses, the following is required:

(a) the child cannot or should not be returned to the home of the parents;

(b) there exists a specific factor or condition (such as the child's age, ethnic background, emotional, physical or mental disability, or membership in a minority or sibling group) making it reasonable to conclude that the child cannot be placed for adoption without providing adoption assistance; and

(c) except where it would be against the best interests of the child, a reasonable but unsuccessful effort has been made to place the child without adoption assistance.

(2) Agency application for federal subsidy: The agency shall apply to the department for federal subsidy by contacting the department's central adoptions unit at the address specified in Section 11.2 [now Subsection B of 8.26.3.11 NMAC].

E. Eligibility for state subsidy: Only children who are in the department's custody and are placed by the department are eligible for state subsidy.

(1) The adoptee is eligible when the adoptee is relinquished, conditionally or unconditionally, to the department or the department has terminated the adoptee's parents' parental rights and the court has given custody of the adoptee to the department.

(2) If a consent is executed, the adoptee is not eligible for subsidy because the child is not in the department's custody.

(3) It has been determined that the adoptee has special needs as defined in Section 43.4.1 [now Paragraph (1) of Subsection D of 8.26.3.43 NMAC] and it has been established that the adoptive family is unable to meet these needs without financial assistance.

(4) There shall be documentation of efforts to identify an adoptive family who could meet the child's special needs without subsidy, except where it would not be in the child's best interest.
[01/01/98; Recompiled 11/30/01]

8.26.3.44 ADOPTION OF AN INDIAN CHILD:

A. See Sections 32A-5-4 and 32A-5-5 NMSA 1978.

B. In addition to other applicable requirements of the Act and regulations, the following provisions shall apply to the adoption of an Indian child subject to the ICWA as defined in Section 7.10 [see compiler's note].

C. Purpose: The purpose of this regulation is to promote the public policy of enforcing compliance with the ICWA in the state of New Mexico and protecting the integrity of tribal communities.

D. Procedure for verification of a child's Indian status: If the petitioner, petitioner's attorney, the biological parent's attorney, the department, the investigator or agency charged with investigating an adoption has any reason to believe the child to be adopted may be a child subject to the ICWA, it shall be the responsibility of such person to verify the adoptee's Indian status and to notify the court in which the adoption proceeding is pending of the adoptee's Indian status. Verification of a child's Indian status shall include at a minimum:

(1) interviews with persons or agencies who may have information about the child's family background;

(2) written inquiry and notice to any and all tribes with which the child may be affiliated or eligible for enrollment as a member. Such inquiry shall include all available information from which a tribe may reasonably be able to determine the child's tribal affiliation or eligibility for enrollment as a member, and notice of the pending adoption proceeding, provided, however, that notification to a tribe or tribal agency shall be consistent with the provisions of the ICWA concerning the desire of a parent for anonymity; and

(3) if it is not possible to identify the Indian child's tribe, the petitioner shall contact the BIA for assistance at the Albuquerque Area Office, P.O. Box 26567, Albuquerque, New Mexico 87125-6567.

E. Anonymity of biological parents: Every effort shall be employed to protect the anonymity of the biological Indian parent. However, the ICWA placement preferences shall be observed. See Section 32A-5-5 NMSA 1978.

F. Jurisdiction:

(1) Exclusive tribal court jurisdiction: A petition for adoption of an Indian child who resides or is domiciled on a reservation shall be filed in the tribal court of that Indian tribe.

(2) Concurrent state court jurisdiction: If the Indian child resides or is domiciled outside the reservation, the petition for adoption may be filed in state court or the Indian child's tribal court.

(3) Transfer from state court to tribal court: If a petition for adoption is filed in state court, either biological parent, the Indian custodian, or the Indian child's tribe may petition the court for transfer of the proceeding from state court to tribal court. In the absence of a showing and finding of good cause to the contrary, the state court shall transfer the proceeding to the tribal court. However, such transfer shall be subject to refusal of jurisdiction by the tribal court.

G. Placement preferences: Any adoptive placement of an Indian child shall be in accordance with the placement preferences established by the ICWA unless the Indian child's tribe establishes a different order of preference by resolution.

(1) ICWA placement preferences: In any adoptive placement of an Indian child under the act, a preference shall be given, in the absence of good cause to the contrary, to a placement in the following declining order of preference:

- (a) a member of the child's extended family;
- (b) other members of the Indian child's tribe; or
- (c) other Indian families.

(2) Social and cultural standards for application of placement preferences: The standards to be applied in meeting the preference requirements shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

H. Termination of parental rights:

(1) Standard of proof: The grounds for termination of parental rights of an Indian child shall be supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the Indian child by the Indian parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child.

(2) Notice: Notice shall be given pursuant to Section 32A-5-16 and Section 44.14 [now Subsection N of 8.26.3.44 NMAC]

I. Relinquishment and consent:

(1) See Sections 32A-5-21 through 32A-5-24 NMSA 1978.

(2) Indian child who is a resident or domiciliary of a reservation: A consent to adoption or a relinquishment of parental rights of an Indian child who is residing or domiciled on a reservation shall be taken before the tribal judge of that Indian tribe.

(3) Indian child not a resident or domiciliary of a reservation: A consent to adoption or relinquishment of parental rights of an Indian child who is not residing or domiciled on a reservation shall be taken before a judge who has jurisdiction over adoption proceedings. See section 44.10 [now Subsection J of 8.26.3.44 NMAC] of these regulations for notice requirements.

(4) Form of consent: In addition to the requirements of Section 32A-5-21 NMSA 1978 and Section 24 [now 8.26.3.24 NMAC] the relinquishment or consent of an Indian child shall include the following:

- (a) certification by the presiding judge that the terms and consequences of the consent were fully explained in detail and were understood by the parent or Indian custodian;
- (b) certification by the presiding judge that the parent or Indian custodian understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood.

(5) Implied consent not permitted: A consent or relinquishment by an Indian custodian or parent of an Indian child shall not be implied as permitted under the act in Section 32A-5-18.

(6) Revocation of relinquishment or consent prior to entry of final decree: A relinquishment or consent of an Indian child may be revoked by the parent or Indian custodian of an Indian child for any reason at any time prior to the entry of a final decree of termination or adoption. Upon such revocation, the Indian child shall be returned to the parent or Indian custodian.

(7) Revocation of relinquishment or consent subsequent to entry of final decree: Within two years after entry of the final decree of adoption of an Indian child in any New Mexico court, the parent may withdraw the consent to the adoption and may petition the court to vacate a decree of adoption on the ground that the consent or relinquishment was obtained through fraud or duress. If the court finds that the consent or relinquishment was obtained through fraud or duress, the court shall vacate the decree of adoption and return the child to the parent or Indian custodian.

J. Notice:

(1) In addition to the notice requirements of Sections 32A-5-16 and 32A-5-27 NMSA 1978, notice of a termination of a parental rights proceeding, a request for placement or a petition for adoption shall be served on:

- (a) the parent or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom;
- (b) Indian custodian;
- (c) Indian child's tribe; and
- (d) if the Indian child's parent, custodian or tribe cannot be determined, then notice shall be served on the United States secretary of the interior.

(2) Content of notice to Indian tribe: Notice to any Indian tribe shall include, to the extent available:

- (a) name of the Indian child, the child's birth date and birthplace;
- (b) name of the Indian tribe in which the child is enrolled or may be eligible for enrollment;
- (c) all known names of the Indian child's biological mother, biological father, maternal and paternal grandparents and great grandparents or Indian custodians, including maiden, married and former names or aliases;

(d) birth dates; places of birth and death; tribal enrollment numbers and any other identifying information of the Indian child's biological mother, biological father, maternal and paternal grandparents and great grandparents or Indian custodians;

(e) current and former addresses of the Indian child's biological mother and father, maternal and paternal grandparents and great grandparents, or Indian custodians;

(f) a copy of the pleading by which the proceeding was initiated; and

(g) the right to intervene in the action.

(3) Form of service: A parent shall be personally served. All other persons shall be served by registered mail with return receipt requested.

(4) No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe: Provided, that the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceedings.

(5) Failure to comply with notice requirements: Failure to comply with notice requirements may result in an invalid adoption decree.

K. Intervention: In any state court adoption proceeding involving an Indian child, the Indian custodian and the Indian child's tribe shall have the right to intervene at any time in the proceeding.

[01/01/98; Recompiled 11/30/01]

[Compiler's note: Subsection B, above, contains a reference to Section 7.10; however, given the context of the reference, it would appear that the correct citation is more likely Section 7.11, which is now Subsection K of 8.26.3.7 NMAC.]

8.26.3.45 INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN:

A. See NMSA 1978, Sections 32A-11-1 et seq. NMSA 1978.

B. Compliance mandatory: The interstate compact on the placement of children (hereafter ICPC) has been enacted by the state of New Mexico and therefore compliance with the ICPC is required in all interstate adoptive placements from or to New Mexico.

C. Enforcement: The ICPC is a binding reciprocal agreement among all of the states and territories of the United States and has the force and effect of statutory law in each party state or territory. Failure to comply may result in intervention by the department or in an interstate adoption being denied or found invalid.

D. Who must comply with the ICPC: Any person placing, or causing to be placed, a child for adoption in New Mexico, or placing, or causing to be placed, a child for adoption from New Mexico to another state or territory, shall comply with the ICPC. The person sending the child is designated as the "sending agency" and the person receiving the child is designated as the "receiving agency."

(1) Independent adoptions: The parent placing the adoptee is the sending agency in all independent adoption regardless of the manner of termination of parental rights or the creation of a guardianship, or other legal custody proceeding, in the sending state. The prospective adoptive parents are the receiving agency.

(2) Department adoptions: If the sending agency is the state child welfare agency for the sending state, the receiving agency shall be the state child welfare agency or a private agency licensed to place a child for adoption in the receiving state.

(3) Agency adoptions: If the sending agency is a private agency licensed to place a child for adoption in the sending state, the receiving agency shall be the state child welfare agency or a private agency licensed to place

a child for adoption in the receiving state. Any and all agency services provided in an ICPC adoption proceeding shall be conducted by employees of the agency. ICPC adoptive services shall not be provided by an investigator or a counselor as defined in Sections 7.3 and 7.15 [see compiler's note].

E. ICPC process:

(1) Prior to placement: Prior to the placement of an adoptee in another state, the sending agency shall submit the ICPC form with the proposed placement to the ICPC administrator in the state from which the child is to be sent.

(2) ICPC approval: ICPC approval for placement into the receiving state shall be obtained from the receiving state's ICPC administrator **prior** to the placement of the adoptee into the receiving state.

(3) Placement into New Mexico: In cases where the adoptee is being placed for the purpose of adoption into New Mexico, the persons involved in the adoption shall comply with the provisions of the act and the regulations governing such matters as placement, counseling narratives, consents or relinquishments, pre-placement study and full disclosure.

(4) Placement from New Mexico: In cases where a child is being placed for the purpose of adoption from New Mexico, in addition to complying with the receiving state's requirements, the persons involved in the adoption shall comply with the applicable provisions of the act and the regulations governing such matters as counseling narratives, consents or relinquishments, and full disclosure.

(5) Compliance time limitation: All of the forms and information required by the New Mexico ICPC administrator shall be completed and submitted to the administrator within four months from the date of initiation of the request for an interstate placement unless the request is made prior to the adoptee's birth, in which event the four-month period shall commence at birth. The person requesting the ICPC placement may provide the administrator with good cause for an extension of time. In no event shall the extension of time exceed two additional months. Failure to comply with these time limits shall result in the denial of the placement.

[01/01/98; Recompiled 11/30/01]

[Compiler's note: Paragraph (3) of Subsection D, above, contains a reference to Sections 7.3 and 7.15; however, given the context of the reference, it would appear that the correct citations are more likely Sections 7.5 and 7.16, which are now Subsections E and P of 8.26.3.7 NMAC.]

8.26.3.46 ADOPTION OF A FOREIGN BORN CHILD:

A. A foreign born child may be adopted in New Mexico:

(1) Such adoption does not entitle the adoptee to citizenship in the United States.

(2) The foreign born adoptee shall comply with all Integration [*sic*] and Naturalization Services (INS) requirements and may not be entitled to remain in the U.S. in spite of the adoption if INS requirements are not satisfied.

(3) If INS does not recognize a foreign adoption decree, a petition for adoption shall be filed in New Mexico and all of the requirements of the act and these regulations shall be satisfied unless express exceptions to the act are provided in the regulations.

B. Exceptions to the pre-placement study for a foreign born child:

(1) Substitute criminal records check: In any adoption involving a foreign born child, the INS form (currently I-171) may be submitted in place of the criminal records check required by the regulations. See Section 18.8 [now Subsection H of 8.26.3.18 NMAC].

(2) Medical examination and certificate: Prior to filing the petition for adoption, a foreign born child shall have a medical examination by a physician licensed to practice medicine in any state in the United States. A medical certificate of the foreign born child's physical condition shall be filed with the petition for adoption.

[01/01/98; Recompiled 11/30/01]

8.26.3.47 REPRODUCTIVE ALTERNATIVES:

A. Sperm donor; Artificial Insemination: See Section 40-11-6 NMSA 1978.

B. Surrogate mother:

(1) A surrogate mother shall not be paid to conceive and/or carry a child. See Section 32A-5-34(F) NMSA 1978

(2) Reasonable expenses: The petitioner may pay for any expenses of the biological mother allowed by the act in Section 32A-5-34(B) NMSA 1978

(3) The surrogate mother's parental rights may only be terminated as provided in the act. Therefore, the surrogate mother may elect not to consent to the adoption or to relinquish her parental rights.

(4) If the surrogate mother elects to consent to the adoption, the spouse of the biological father or other person permitted to adopt the adoptee pursuant to the act, may initiate an adoption proceeding in conformance with the act.

[01/01/98; Recompiled 11/30/01]

8.26.3.48 - 8.26.3.49 [RESERVED]

8.26.3.50 AUTHORIZED SIGNATURE: Approved, Heather Wilson, secretary, children, youth and families department.

[01/01/98; Recompiled 11/30/01]

HISTORY OF 8.26.3 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with State Records Center and Archives under:

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SSD 7.4.0, Adoption - Regulations Under the Adoption Act, 8/22/88.

SSD 7.4.0, Adoption - Regulations Under the Adoption Act, 9/18/90.

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