



April 10, 2023

Caroline Menjivar
Chair, Senate Budget Subcommittee No. 3 on Health and Human Services
Legislative Office Building
1020 N Street, Room 502
Sacramento CA, 95814

RE: 5180-013-BCP-2023-GB Adoption Facilitators Program Unit—CONCERNS

Dear Chair Menjivar,

On behalf of the California Alliance of Child and Family Services (California Alliance), I am writing to express our deep concerns about the practices of adoption facilitators in California and the proposed trailer bill language and budget change proposal in the Fiscal Year 2023-24 State Budget. Adoption facilitators are individuals or organizations that provide services to connect prospective adoptive parents with birth parents or children who are available for adoption. While some facilitators operate ethically and transparently, there are many who engage in practices that are concerning and even illegal, and there is no oversight to ensure that facilitators do operate ethically. We respectfully request the Legislature reject the budget change proposal and trailer bill language and take a stronger stance to ban the practice of adoption facilitators and require the use of adoption attorneys or adoption agencies.

The California Alliance represents over 160 nonprofit community-based organizations that provide services to children, youth, and families across the state through child welfare, special education, and mental health services. Some member agencies represent licensed adoption agencies that are engaged in supporting children and youth in foster care, as well as services to pregnant women and their families through the adoption process. Our members are licensed by the Department of Social Services (CDSS), are bound by an extensive regulatory structure, have specific education and experience requirements, undergo regular audits and inspections by the state, are nationally accredited, and uphold strong ethical standards.

This is the opposite of the practice of adoption facilitators who are unregulated and can prey upon vulnerable prospective adoptive families and birth families. Unlike adoption agencies, facilitators are not subject to licensing, accreditation or monitoring by the state. This lack of regulation means that there are no requirements for training, monitoring or accountability for facilitators. The facilitator is not required to provide services to the birth parent, and most fees to the Facilitator are paid by the adoptive parent(s), inferring that they are the primary client. In response to concern for the rights of birth parents contemplating adoption for their child in an Independent Adoption, the State created the role of the Adoption Service Provider (ASP) in 2006, to provide advisement to the birth parent(s). The ASP must be either an LCSW or LMFT with 5 years' experience in adoption related practice. They must be registered with CDSS and are regulated by the procedures for Independent Adoptions, and their fee is limited to \$500. (*Authority cited: Section 8621, Family Code; Sections 10553 and 10554, Welfare and Institutions Code*)

In Independent Adoption, when placing a child with an adoptive family, there is no requirement for the family to be fingerprinted or have any other criminal record clearance, or background check, prior to the placement of the child. Background checks and adoptive parent assessment does not occur until a petition to adopt is filed and the state or county adoption office is notified of an adoption petition, requiring fingerprint and child abuse clearances, and assessment of the adoptive parents, as the legal process of adoption moves

forward. Without prior assessment, children and birth parents may both be at risk of being exploited, and children could be subjected to danger in an unfit home. Adoptive parents are also at risk of mistreatment and false hopes if background checks and/or an assessment reveals concerns that would disrupt the placement after the child is already part of their family.

At this time, individuals seeking to adopt can work with licensed adoption agencies, adoption attorneys accountable to the bar, or with adoption facilitators who are not accountable to anyone. Independent adoptions were originally structured for situations where the birth mother could choose someone, she knew to adopt her child. However, over time this has been exploited as a profitable business, much like a brokerage, where facilitators match prospective adopters with birth parents that have no prior connections to each other, for a fee. This has traditionally been considered to be a probate matter, when in fact, it should be considered a child welfare issue, since babies and children are the most vulnerable parties here.

Adoption facilitators currently must be “registered” with the state, which on CDSS’ website clearly states *“Listing on this website is not intended to be an endorsement of any facilitator by the California Department of Social Services (CDSS.) The CDSS does not provide oversight over adoption facilitators.”* In practicality, adoption facilitators are less regulated than nail salons although they have the lives of children and vulnerable families in their hands which should require strong regulation, accountability and ethical standards.

The registry for adoption facilitators was created by SB 2035 (Chapter 1135, Statutes of 1996) and further amended by SB 1758 (Chapter 754, Statutes of 2006). Family Code sections 8623 – 8639 require CDSS to adopt regulations for a statewide registration process for adoption facilitators and require the facilitators to post a bond. In addition, CDSS is required to verify a process for complaints, investigate complaints, and assess penalties. Concerns were raised during both bills by licensed adoption agencies condoning the practice of adoption facilitators.

California Association of Adoption Agencies, in opposition to the 1996 bill stated in an Assembly Judiciary Committee analysis that, “it is clear that there is a complete misunderstanding of what is involved in the adoption of children in this state. It is the strongly held view of this association that the fact that individuals, without an adoption agency license, are engaged in “facilitating” contact between prospective adoptive parents and pregnant, and often vulnerable, women (and for profit!) is not an activity to be condoned by public policy. Such activity has been illegal in California since 1945.”

However, while these bills did try to put some minimal standards around facilitators in California, CDSS has never been staffed nor does the registry actually provide any form of significant oversight. Adoption facilitators actively portray themselves as “licensed” by the state, which is misleading and not true. For example, “A Child’s Dream” states on their website that they are a licensed adoption facilitator, a status which does not exist and is extremely misleading to prospective adoptive families and birth mothers.¹

One of the most troubling practices of adoption facilitators in California is the charging of excessive fees. In some cases, facilitators charge tens of thousands of dollars to connect adoptive parents with birth parents or children. These fees can create significant financial burdens for families who are already navigating a complex and emotional process. Potential adopters are usually charged up front with the promise of placement of a child; a promise that is, sadly, often not realized². Moreover, some facilitators engage in deceptive practices by

¹ <https://www.achildsdream.org/california>

² “A Sacramento woman billed families thousands to find them a baby. Many say they were scammed” January 10, 2023. Link: <https://www.sacbee.com/news/investigations/article270082407.html>

charging fees for services that are not provided or by hiding fees in contracts or agreements. These practices are not only unethical but also illegal under California law; however, since there is no oversight there is no mechanism to prevent these practices.

Moreover, adoption facilitators may not always act in the best interests of the babies/children for whom they are arranging adoptions. For example, some facilitators may prioritize the interests of adoptive parents over the needs and rights of birth parents or children, since fees are generally paid by the adoptive parents. The requirement for an Adoption Service Provider (ASP) to provide advisement to a birth parent was instituted to mitigate this imbalance. However, by the time the ASP enters the process, the birth parent may already be in a relationship with the adoptive parents, and she may find it difficult to disengage in the face of pressure from the facilitator or the adoptive parents to follow through with the placement of her child. This can also lead to situations where children are placed in homes that are not suitable or safe, as noted earlier in this letter. Several states have prohibited the use of facilitators or intermediaries including Delaware, Kansas, and Maine and nine states have limited the placement of children in adoptive homes to licensed agencies only.³

In light of the aforementioned concerns, if the state is not amenable to eliminating facilitator practices in California, we respectfully request, at the bare minimum:

- Prior to an adoptive placement through a facilitator, and an attorney, that the adoptive family be fingerprinted through the CDSS background check system and that an adoption assessment be completed by CDSS or a licensed adoption agency.
- We recommend that fees for facilitator services be approved and regulated by CDSS, just as licensed agency fees are.
- Facilitators should be required to inform both birth parents and prospective adoptive parents, of their rights, obligations, complaint process, fees charged, and other aspects of the matching and adoption process, through use of a signed Statement of Understanding. Independent adoptions be considered a child welfare concern, rather than a probate matter, so that all children in California are afforded the protection of the State.

In conclusion, the practices of adoption facilitators in California are a significant cause for alarm, and steps must be taken to address them. Through prohibiting the use of facilitators and requiring adoptive families to utilize either an adoption attorney or adoption agency the state can greatly increase the integrity and protection of the process for birth parents and adoptive families, and we can help ensure that adoption is a safe and ethical process that benefits everyone involved, and most importantly safeguards the protection of the children of California.

Thank you for your attention to this important issue. Please feel free to reach out with any questions to trinde@cacfs.org.

Sincerely,



Tyler Rinde
Deputy Director of Child Welfare Policy

³ <https://www.childwelfare.gov/pubPDFs/advertising.pdf>



CC: Honorable Members, Senate Budget Subcommittee #3 on Health and Human Services
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