



August 14, 2023

Kim Johnson
Director, California Department of Social Services
744 P Street
Sacramento, CA 95814

Re: Requested Legislative Clean-Up to AB 120 (Committee on Budget) – Adoption Facilitator Prohibition

Dear Director Johnson:

On behalf of the California Alliance of Child and Family Services (CA Alliance) and the California Adoption-ART Lawyers (ACAL), we request your assistance clarifying some technical issues we have identified in AB120 (Committee on Budget), the human services budget trailer bill that was signed into law on July 10, 2023 and to request a meeting with you for further discussion. Our main concern is that the final set of amendments to the bill that went into print on June 24, 2023, included several provisions that have unintended consequences that will adversely impact adoptions in California.

Our understanding is that the bill intended to implement a statutory prohibition on adoption facilitators that the Community Care Licensing could effectively implement without impacting other essential providers such as mediators, home study investigators, or adoption attorneys. To that end, we have drafted the attached legislative language that will protect those impacted by adoption and target the prohibition towards the unscrupulous business practices of paid, unlicensed adoption intermediaries.

Our primary concerns with the law as written are threefold:

- The new statutory definition of unlicensed adoption agency found in Family Code Section §8609 may unintentionally implicate certain legitimate adoption providers who are essential to the adoption process.
- Family Code §8609(c) does not include a penalty sufficient to punish unlicensed adoption agencies in California who will inevitably seek to exploit available loopholes.
- Since the penalty outlined in the new law is not limited to those who receive compensation, it could be interpreted to implicate individuals such as clergy, friends, neighbors, etc., who informally connect parties to adoption without compensation.

Issue #1: Unintentional Implications for Essential Adoption Providers

Rationale: The law could be interpreted to include the following adoption providers in the definition of “unlicensed adoption agencies”:

- mediators (who often assist with post-adoption contact agreements between adoptive families and birth families);

- home study investigators (for stepparent adoptions);
- out-of-state adoption licensed adoption agencies participating in a cooperative placement with a California adoption agency; and
- attorneys providing legal services to clients in their state

As each of these providers often plays an essential role in an adoption, categorizing them as unlicensed adoption agencies will have a detrimental impact on California adoptions - both interstate and intrastate. An amendment is necessary to exempt these legitimate adoption providers.

Solution: Add a new subdivision (d) to Family Code §8609:

(d) Notwithstanding the above, the following persons and entities shall be excluded from the definition of “unlicensed adoption agency” when providing the specific services enumerated below:

(1) An adoption service provider, as defined by Family Code Section 8502, who provides services in an independent adoption as authorized by law, and who does not provide any of the services listed in subdivision (a), above.

(2) A person or entity who completes an adoption-related investigation or report as authorized by law, and who does not provide any of the services listed in subdivision (a), above.

(3) A licensed MFT, LCSW, psychologist, or psychiatrist who provides adoption-related mental health services or evaluations, and who does not provide any of the services listed in subdivision (a), above.

(4) A mediator who provides conflict resolution services in connection with an adoption dispute, and who does not provide any of the services listed in subdivision (a), above.

(5) An adoption agency that is licensed by another jurisdiction and has entered into a written cooperative agreement with a licensed California adoption agency pursuant to 22 CCR 35917(e) or Family Code Sections 8900 et seq., and that does not provide to any unlicensed adoption agency, or receive from any unlicensed adoption agency, any fees, donations, or other consideration, whether directly or indirectly.

(6) An attorney licensed to practice law in any jurisdiction who provides adoption-related legal services on behalf of a resident of that jurisdiction, or who provides adoption-related legal services related to an adoption proceeding in that jurisdiction, and who does not provide to any unlicensed adoption agency, or receive from any unlicensed adoption agency, any fees, donations, or other consideration, whether directly or indirectly.

Issue #2: Preventing Circumvention by Unlicensed Adoption Agencies

Rationale: The new law is inadequate to deter unlicensed adoption intermediaries who seek to exploit existing loopholes by working through licensed entities. An amendment is necessary to prevent this conduct without penalizing unwittingly ensnared adoptive parents. This has an exception for individuals do so on a good-faith effort included to exclude prospective adoptive families that may not be aware that an individual is operating as an unlicensed adoption agency.

Solution: Add a new subdivision (e) to Family Code §8609:

(e) Any person or entity that provides any payment, donation, or other consideration to an unlicensed adoption agency for any adoption-related services is guilty of a misdemeanor unless the payor did so based on a good faith belief that the recipient was legally authorized by the laws of the State of California to provide such services.

Issue #3: Unintentional Restrictions on Unpaid Intermediaries

Rationale: The parties to adoption are often connected via mutual acquaintances, family members, places of worship, counselors, etc. If the new law fails to specify that only intermediaries receiving compensation (directly or indirectly) are considered unlicensed adoption agencies, we could unintentionally implicate a well-meaning neighbor or family friend and subject them to civil and criminal penalties. A minor amendment is necessary to clarify that the penalty only applies to those who act as intermediaries *in exchange for compensation*.

Solution: Add “for compensation” to Family Code §8521(a)(5), §8533(a)(4), Health & Safety Code §1502(9)(a)(v), and §1502(a)(10)(a)(iv).

For example, Health & Safety Code §1502(9)(a)(v) should be amended to include the additional text set forth below in red.

- (9) (A) “Full-service adoption agency” means any licensed entity engaged in the business of providing adoption services that does all of the following:
- (i) Assumes care, custody, and control of a child through relinquishment of the child to the agency or involuntary termination of parental rights to the child.
 - (ii) Assesses the birth parents, prospective adoptive parents, or child.
 - (iii) Places children for adoption.
 - (iv) Supervises adoptive placements.
 - (v) Recruits prospective adoptive parents, locates children for an adoption, or acts as an intermediary between the parties to an adoption **in exchange for compensation**.

In addition to the above, our other suggested amendments are technical in nature; for example, using inclusive language that captures all the varieties of parents recognized under California law, including legal parents through surrogacy, LGBTQ families where there is a legal parent who neither gives birth nor adopts, or stepparent adoptions by a 3rd parent.

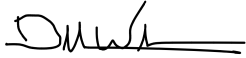
The CA Alliance represents over 160+ nonprofit community-based organizations providing services to children, youth, and families in public systems, including licensed adoption agencies, and our mission and vision are to promote the health, well-being, and safety of children, youth, and families in California so that they can thrive in loving, healthy, safe communities. ACAL’s mission is to provide professional, public, and judicial education on adoption, assisted reproduction, guardianship, foster care proceedings, and legislation. We encourage fair and balanced family formation laws and regulations and seek to prevent exploitation of those involved in these matters.

For these reasons and more, we respectfully ask for your support and collaboration in seeking clean-up legislation in the remaining weeks of the legislative session to address these important areas of needed clarification for many adoption providers and stakeholders.

Sincerely,



Tyler Rinde
Deputy Director of Child Welfare Policy
CA Alliance



Deborah Wald, CFLS
President, Academy of California Adoption Lawyers

cc: Elizabeth Schmitt, Consultant, Senate Budget and Fiscal Review Committee
Nicole Vasquez, Deputy Chief Consultant, Assembly Budget Committee
Mareva Brown, Policy Analyst, Office of Senate President pro Tempore Atkins
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