

NEW YORK STATE

DEPARTMENT OF SOCIAL SERVICES

40 NORTH PEARL STREET, ALBANY, NEW YORK 12243

BARBARA B. BLUM  
Commissioner



[An Informational Letter informs local districts of potential developments in the Social Services field, or of actual or potential developments in collateral fields of interest.]

**INFORMATIONAL LETTER**

TRANSMITTAL NO.: 81 INF-30  
[Services]

TO: Commissioners of Social Services

SUBJECT: Fees in Connection with Adoptions

DATE: December 28, 1981

SUGGESTED DISTRIBUTION: Commissioner  
Director of Services  
All Adoption Services Workers  
Social Services and County Attorneys  
Authorized Agencies Providing Adoption Services

CONTACT PERSON: Any questions regarding this release should be directed to Mr. H.A. Harkess, Bureau of Policy Planning, Division of Services, phone toll free 1-800-342-3715, extension 4-9574.

I. PURPOSE

The purpose of this letter is to inform local districts and authorized agencies providing adoption services of the provisions of Chapter 283 of the Laws of 1981. These provisions amend subdivision 6 of section 374 of the Social Services Law and add a new subdivision 7 to section 115 of Domestic Relations Law, in regard to payment or receipt of certain fees in relation to adoptive placements and/or adoptions and requiring affidavits relating thereto.

II. BACKGROUND

Social Services Law, prior to the passage of Chapter 283, prohibited the payment of fees to any agency, organization or person, except an authorized agency, for the purpose of "placing out" a child, which meant arranging for adoption or foster care for a child. (There was no specific prohibition against payments for the adoption of a child, only against arranging the adoption of a child). This oversight created a loophole in which certain "black market" and

FILING REFERENCES

Previous INFs/ADMs	Dept. Regs.	Social Services Law and Other Legal References	Bulletin/Chapter Reference	Miscellaneous References
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'gray market' adoptions occurred, including the charging of fees, often very high fees, for the adoption of children, especially infants. While clearly outside the intent of the law, as long as these fees could be identified as in relation to an actual adoption and not simply for "arranging" an adoption, they were technically legal.

Concern over this situation led the Legislature to specifically add "adoption" to the prohibitions against payments to entities other than authorized agencies and to make explicit that these prohibitions also include payment or receipt of fees for "assisting" a parent, guardian, or relative of a child in placing that child for the purpose of adoption. The Legislature reasserted that payment of bonafide medical or legal fees would be permitted, clarified the definitions of acceptable fees for medical and legal costs, and added nurses to those who may receive payment for bonafide medical care provided to a mother and/or child. Chapter 283 also adds a new requirement to the private placement adoptions provisions of Domestic Relations Law that the adoption parent(s) and the attorney representing the adoptive parent(s) file an affidavit describing "all fees, compensation and other remunerations paid or received in connection with the placement or adoption of a child."

### III. PROGRAM IMPLICATIONS

The provisions of Chapter 283 and its amendments to Social Services and Domestic Relations Law strengthen the power and authority of the State, local districts, and law enforcement agencies to curb "gray market" and "black market" adoptions. While still allowing bonafide medical or legal expenses relating to the care of a mother or child or to completing the formalized adoption process through the courts, these amendments specifically prohibit any other payments in relation to an adoptive placement or adoption of a child. Enforcement power is added to these prohibitions by requiring the submission of affidavits to the court prior to the completion of an adoption finalization. The filing of a false statement in an affidavit with the Family Court or the Surrogate Court would subject the party filing such a document to possible civil and criminal penalties. Where the attorney and/or the adoptive parent fail to submit an affidavit, the result would be an incomplete record before the court and a delay in the finalization of the adoption proceeding.

### IV. RECOMMENDATIONS

Local districts frequently have occasion to learn of or review private placement adoptions. When they do, districts should be certain to review these new, as well as the old, provisions of SSL 374.6 and DRL 115, to ascertain that all the requirements have been fulfilled properly. This is especially true when a district has been called upon by a court to complete such a review.

Local districts may also assist in the dissemination of this important material by distributing this informational letter and its attachment to social services and county attorneys, to their respective district attorneys, to all authorized agencies within the district which provide adoption services, and to probation departments which conduct adoptive studies.

  
NORRIS P. PHILLIPS  
Deputy Commissioner  
Division of Services

Attachment



# OFFICIAL COPY

## STATE OF NEW YORK

2429

1981-1982 Regular Sessions

### IN SENATE

February 4, 1981

CHAP 223 LAWS OF 1981

Introduced by Sen. PISANI—read twice and ordered printed, and when printed to be committed to the Committee on Child Care

AN ACT to amend the social services law and the domestic relations law, in relation to fees in connection with private placement adoptions

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision six of section three hundred seventy-four of  
2 the social services law, as amended by chapter three hundred sixty-eight  
3 of the laws of nineteen hundred seventy-nine, is amended to read as  
4 follows:

5 6. An authorized agency, as defined in paragraphs (a) and (c) of sub-  
6 division ten of section three hundred seventy-one of this chapter, may  
7 charge or accept a fee or other compensation to or from a person or per-  
8 sons with whom it has placed out a child, for the reasonable and neces-  
9 sary expenses of such placement; and no agency, association, corpora-  
10 tion, institution, society or organization, except such an authorized  
11 agency, and no person may or shall request, accept or receive any com-  
12 pensation or thing of value, directly or indirectly, [for] in connection  
13 with the placing out or adoption of a child or for assisting a parent,  
14 relative or guardian of a child in arranging for the placement of the  
15 child for the purpose of adoption; and no person may or shall pay or  
16 give to any person or to any agency, association, corporation, institu-  
17 tion, society or organization, except such an authorized agency, any  
18 compensation or thing of value [for] in connection with the placing out  
19 or adoption of a child or for assisting a parent, relative or guardian  
20 of a child in arranging for the placement of the child for the purpose  
21 of adoption.

22 This subdivision shall not be construed to prevent the payment of  
23 salaries or other compensation by an authorized agency to the officers

EXPLANATION—Matter in italics (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 or employees thereof; nor shall it be construed to prevent the payment  
2 by a person with whom a child has been placed out of reasonable and ac-  
3 tual medical fees or hospital charges for services rendered in connec-  
4 tion with the birth of such child or of other necessary expenses in-  
5 curred by the mother in connection with or as a result of her pregnancy  
6 or the birth of the child, or of reasonable and actual nursing, medical  
7 or hospital fees for the care of such child, if such payment is made to  
8 the physician, nurse or hospital who or which rendered the services or  
9 to the natural mother of the child, or to prevent the receipt of such  
10 payment by such physician, nurse, hospital or mother. Nor shall this  
11 subdivision be construed to prevent the payment by an adoptive parent,  
12 as defined in section one hundred nine of the domestic relations law, of  
13 reasonable and actual legal fees charged for consultation and legal ad-  
14 vice, preparation of papers and representation and other legal services  
15 rendered in connection with an adoption proceeding or of necessary dis-  
16 bursements incurred for or in an adoption proceeding.

17 § 2. Subdivisions seven, eight and nine of section one hundred fifteen  
18 of the domestic relations law are renumbered subdivisions eight, nine  
19 and ten, and a new subdivision seven is added to read as follows:

20 7. The adoptive parent or parents shall also present an affidavit  
21 describing all fees, compensation and other remunerations paid by such  
22 parent or parents on account of or incidental to the birth or care of  
23 the adoptive child, the pregnancy or care of the adoptive child's mother  
24 or the placement or adoption of the child and on account of or inciden-  
25 tal to assistance in arrangements for such placement or adoption. The  
26 attorney representing the adoptive parents shall also present an affi-  
27 davit describing all fees, compensation and other remuneration received  
28 by him on account of or incidental to the placement or adoption of the  
29 child or assistance in arrangements for such placement or adoption.

30 § 3. Nothing in this act shall be construed as an expression of  
31 legislative intent that any activity proscribed under the provisions  
32 hereof was lawful under the provisions of law in effect prior to the ef-  
33 fective date of this act.

34 § 4. This act shall take effect on the first day of September next  
35 succeeding the date on which it shall have become a law.

APPROVED

JUN 22 1981

*Henry K. Carey*