INFORMATIONAL LETTER

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

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
'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 bona fide 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 bona fide 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 bona fide 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
IN SENATE

February 4, 1981

CHAP 283

1981-1982 Regular Sessions

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:

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

6. An authorized agency, as defined in paragraphs (a) and (c) of subdivision ten of section three hundred seventy-one of this chapter, may charge or accept a fee or other compensation to or from a person or persons with whom it has placed out a child, for the reasonable and necessary expenses of such placement; and no agency, association, corporation, institution, society or organization, except such an authorized agency, and no person may or shall request, accept or receive any compensation or thing of value, directly or indirectly, for in connection with the placing out or adoption of a child or for assisting a parent, relative or guardian of a child in arranging for the placement of the child for the purpose of adoption; and no person may or shall pay or give to any person or to any agency, association, corporation, institution, society or organization, except such an authorized agency, any compensation or thing of value for in connection with the placing out or adoption of a child or for assisting a parent, relative or guardian of a child in arranging for the placement of the child for the purpose of adoption.

This subdivision shall not be construed to prevent the payment of 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.
or employees thereof; nor shall it be construed to prevent the payment by a person with whom a child has been placed out of reasonable and actual medical fees or hospital charges for services rendered in connection with the birth of such child or of other necessary expenses incurred by the mother in connection with or as a result of her pregnancy or the birth of the child, or of reasonable and actual nursing, medical or hospital fees for the care of such child, if such payment is made to the physician, nurse or hospital who or which rendered the services or to the natural mother of the child, or to prevent the receipt of such payment by such physician, nurse, hospital or mother. Nor shall this subdivision be construed to prevent the payment by an adoptive parent, as defined in section one hundred nine of the domestic relations law, of reasonable and actual legal fees charged for consultation and legal advice, preparation of papers and representation and other legal services rendered in connection with an adoption proceeding or of necessary disbursements incurred for or in an adoption proceeding.

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

7. The adoptive parent or parents shall also present an affidavit describing all fees, compensation and other remunerations paid by such parent or parents on account of or incidental to the birth or care of the adoptive child, the pregnancy or care of the adoptive child's mother or the placement or adoption of the child and on account of or incidental to assistance in arrangements for such placement or adoption. The attorney representing the adoptive parents shall also present an affidavit describing all fees, compensation and other remuneration received by him on account of or incidental to the placement or adoption of the child or assistance in arrangements for such placement or adoption.

§ 3. Nothing in this act shall be construed as an expression of legislative intent that any activity proscribed under the provisions hereof was lawful under the provisions of law in effect prior to the effective date of this act.

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