



Office of Children and Family Services

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Administrative Directive

Transmittal:	21-OCFS-ADM-11
To:	Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies Executive Directors of Voluntary Authorized Adoption Agencies
Issuing Division/Office:	Child Welfare and Community Services
Date:	June 8, 2021
Subject:	Adoptee’s Right to Original Birth Certificate
Suggested Distribution:	Directors of Social Services
Contact Person(s):	See section VI.
Attachments:	OCFS-5400, <i>Adult Adoptee Birth Certificate Request for Information</i>

Filing References (check on these – be sure they are correct and there are no typos)

Previous ADMs/INFs	Releases Cancelled	NYS Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
		18 NYCRR 421.4, 421.11, 421.18 and 466.4	§§ 4138-c, 4138-d and 4138-e of the Public Health Law (PHL); §§371(10), 383-c and 384 of the Social Services Law (SSL)		

I. Purpose

The purpose of this Administrative Directive (ADM) is to inform local departments of social services (LDSSs) and voluntary authorized agencies (VAs) providing adoption services of the provisions outlined in section 4138-e of the Public Health Law (PHL), as added by Chapter 491 of the Laws of 2019. These provisions afford an adopted person born or adopted in New York State (NYS), 18 years of age or older, and other specified persons,

the right to secure a certified copy of the adult adoptee's original long-form birth certificate. When it is impossible for designated officials to provide a certified copy of the original long-form birth certificate, the adult adoptee is entitled to the information that would otherwise appear on the adult adoptee's original long-form birth certificate.

This ADM contains guidance on the request process the adult adoptee or other specified person must initiate and how a LDSS or VA must respond to such request.

In addition, this ADM addresses amendments to the NYS Office of Children and Family Services (OCFS) regulations that require LDSSs and VAs to inform birth (biological) parents, applicants for approval as adoptive parents and approved adoptive parents of the provisions of Chapter 491 relating to the right of adopted persons over the age of 18 and other specified individuals to receive a certified copy of the adult adoptee's original long-form birth certificate or the information set forth in such certificate if it is impossible to provide the adult adoptee's original long-form birth certificate.

The regulations also address the authority of LDSSs and VAs to provide information to biological parents, applicants for approval as adoptive parents, approved adoptive parents and adult adoptees of the right of the adult adoptee, the adoptee's biological parent and the biological siblings of the adoptee to register with the Adoption Information Registry administered by the NYS Department of Health (NYSDOH) and, where applicable, the Mutual Consent Voluntary Adoption Registry in accordance with section 4138-c and 4138-d of the PHL to obtain more information about the adoption.

II. Background

Effective January 15, 2020, section 4183-e of the PHL provides that an adopted person born or adopted in NYS, who is 18 years of age or older or; if the adopted person is deceased, the adopted person's direct line descendants; or the lawful representative of such adopted person or the lawful representative of the deceased adopted person's direct line descendant has the right to receive a certified copy of the adult adoptee's original long-form birth certificate. The statute requires the application for the adult adoptee's original long-form birth certificate be made either to the NYS DOH, the New York City Department of Health and Mental Hygiene (NYC DOHMH), a local registrar of vital statistics, or a person so designated by NYS DOH, NYC DOHMH or a local registrar. The NYS DOH will possess birth certificates of persons born in NYS but outside of New York City (NYC), and NYC DOHMH will have birth records of persons born in NYC.

Section 4138-e of the PHL also provides that, if it is impossible for the applicable commissioner or local registry to provide the adult adoptee's original long-form birth certificate, the adult adoptee, the adult adoptee's lawful representative or, if the adult adoptee is deceased, a member of the adoptee's direct line of descendants¹ or the lawful representative of a member of the adoptee's direct line of descendants has a right to receive client identifiable information about the adult adoptee and biological parents that would have appeared on the adult adoptee's original long-form birth certificate. Such information is available from any authorized agency as defined in section 371(10)(a) and (b) of the Social Services Law (SSL). Such authorized agency would be held harmless from any liability arising out of such disclosure.

¹ Direct line descendant is the child, grandchild, great-grandchild, etc. of an adoptee.

Prior to the change in statute, subdivision 2 of section 114 of the Domestic Relations Law prohibited the disclosure of the last name of the adopted child unless otherwise directed under court order, thereby sealing the identifiable information of the biological parent(s). Section 4183-e of the PHL creates an exception to the sealing standards for adoption information.

Considering the change in the confidentiality standards and the rights afforded to adult adoptees, enacted by Chapter 491, OCFS promulgated amendments to 18 NYCRR 421.4, 421.11 and 421.18 to mandate the notifications set forth in this ADM. OCFS also updated regulatory references to statutory confidentiality standards related to adoption.² These regulations took effect on May 5, 2021.

III. Program Implications

Notification Requirements to Biological Parents, Adoptive Applicant(s) and Approved Adoptive Parent(s)

LDSSs and VAs must inform each biological parent, applicant for approval as an adoptive parent and approved adoptive parent of the right of an adopted person 18 years of age or older born or adopted in NYS, or such person's lawful representative; or if the adopted person is deceased, his/her direct line descendants or the direct line descendants' lawful representative to request and receive a certified copy of the adult adoptee's original long-form birth certificate; or, if it not possible for the NYS DOH, the NYC DOHMH or the local registrar to provide a copy of such certificate, to request and receive demographic and identifying information contained in the adult adoptee's original long-form birth certificate from an authorized agency.³

Regulations⁴ require LDSSs and VAs to inform biological parents, applicants for approval as adoptive parents, and approved adoptive parents that any adult adoptee and other specified persons⁵ may request and receive a certified copy of the adult adoptee's original long-form birth certificate, or if access to a copy of the original long-form birth certificate is not possible, demographic and identifying information contained in the adult adoptee's original long-form birth certificate must be provided by the authorized agency in possession of such information, as referenced above. Such notification must be provided as follows:

For biological parents, in accordance with this ADM, such notification must be provided before:

- a voluntary surrender or termination of parental rights for children in foster care, or
- adoption exploration and voluntary surrender for children and unborn children placed through non-public adoption.⁶

² 18 NYCRR 421.4(b) and 466.4(a).

³ An authorized agency as defined in section 371(10)(a) and (b) of the SSL includes an LDSS, a VA, a court or a Native American Tribe with a state/tribal agreement with the OCFS.

⁴ 18 NYCRR 421.4(g) and 421.11(g)(5) and 421.18(p)

⁵ Other specified persons are the adult adoptee's direct line descendants if the adult adoptee is deceased, or the lawful representative of such adult adoptee or the lawful representative of the deceased adult adoptee's direct line descendent.

⁶ A non-public adoption is the adoption of a child who is not in LDSS custody.

For applicants for approval as adoptive parents, in accordance with this ADM, such notification must be provided at the time of:

- inquiry and orientation

For approved adoptive parents, as required by regulation, such notification must be provided at the time of:

- adoptive placement

Required Response to Requests for Information

All LDSSs and VAs must follow the process set forth in this ADM and the matrix below for adult adoptees and other specified persons who produce an official letter from the NYS DOH/NYC DOHMH stating that NYS DOH/NYC DOHMH is unable to provide a certified copy of the adult adoptee's original long-form birth certificate. This would occur where the person was adopted in but not born in NYS.

There are limits on data maintained by NYS DOH and NYC DOHMH. These limits may impact whether an official letter from NYS DOH or NYC DOHMH is satisfactory for the adult adoptee or other specified person to receive identifying information from a LDSS or VA under this provision. Such limits are related to the jurisdiction of each agency as follows:

- NYS DOH only maintains birth certificates of persons born in NYS counties outside of the City of New York
- NYC DOHMH only maintains birth certificates of persons born in one of the five boroughs of the City of New York.

Note, the adult adoptee's or the other specified person may not know definitively whether the adult adoptee was or was not born in NYS and/or if born in NYS, whether the birth occurred within or outside of the City of New York. Therefore, LDSSs and VAs must provide guidance to adult adoptees or other specified persons who may not understand the distinction between application to NYS DOH or NYC DOHMH.

Accordingly, the following matrix is offered to enable a LDSS or VA to determine whether it has adequate documentation that NYS DOH/NYC DOHMH is unable to produce the certified copy of the adult adoptee's original long-form birth certificate. Documentation is adequate with:

1. Production of an official letter from NYS DOH and an official letter from NYC DOHMH that each agency is unable to provide a certified copy of the adult adoptee's original long-form birth certificate; or
2. Production of an official letter from NYS DOH that such agency is unable to provide a certified copy of the adult adoptee's original long-form birth certificate and the LDSS or VA is aware based on its records that the adult adoptee was not born in the City of New York; or
3. Production of an official letter from NYC DOHMH that such agency is unable to provide a certified copy of the adult adoptee's original long-form birth certificate and the LDSS or VA is aware based on its records that the adult adoptee was not born in a NYS county outside of the City of New York.

The adoptee or other specified person must then provide the LDSS or VA with valid identification and the official letter(s) as described above to complete the request for demographic and identifying information contained in the original long-form birth certificate.

The LDSS or VA must provide, in writing, identifying information that otherwise would have been documented on the adult adoptee's original long-form birth certificate. The LDSS or VA is authorized under section 4138-e of the PHL to only provide the information in the record that aligns with the data on the adult adoptee's original long-form birth certificate in a standard format and may not provide copies of any documents within the record. See attachment for allowable information and the standard format in which it shall be released.

Recommended Notifications

It is strongly recommended that LDSSs and VAs inform birth parents, applicants for approval as adoptive parents, approved adoptive parents and adoptees of the NYS Adoption Information Registry and the Mutual Consent Adoption Registry where an adult adoptee, the adult adoptee's birth parents and the biological siblings of the adult adoptee may register with either to obtain more information about the adoption.

Note: LDSSs and VAs are reminded that, when taking a surrender of guardianship and custody under section 383-c or 384 of the SSL, the surrender must include an Adoption Information Registry Birth Parent Registration Consent form.⁷

IV. Required Action

Effective immediately, LDSSs and VAs must provide to biological parents, applicants for approval as adoptive parents and approved adoptive parents the notifications required by the above referenced amendment to 18 NYCRR 421.4, 421.11 and 421.18 as set forth in section **III. Program Implications**.

LDSSs and VAs must also follow the process released with this ADM for adoptees and other specified persons (as defined in section **III. Program Implications**), who have produced documentation, as set forth in the matrix found on page 4 of this release, of the inability of NYS DOH/ NYC DOHMH to provide a certified copy of the adult adoptee's original long-form birth certificate.

V. Systems Implications

There are no systems implications or changes required to implement or support this policy.

VI. Additional Information (Optional)

Additional information on obtaining an original birth certificate for adult adoptees may be found on the NYS DOH website at:

https://www.health.ny.gov/vital_records/preadoption.htm

⁷ 08-OCFS-INF-12.

VII. Contacts

Any questions concerning this release should be directed to the appropriate regional office in the OCFS Division of Child Welfare and Community Services:

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VIII. Effective Date

Immediate.

/s/ Lisa Ghartey Ogundimu

Issued by:

Name: Lisa Ghartey Ogundimu

Title: Deputy Commissioner

Division/Office: Division of Child Welfare and Community Services