SECTION 1305 - CONFIDENTIAL INTERMEDIARY
CHANGE # 06-2010
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I. BACKGROUND

For many members of the adoption triad - adoptee, adoptive family, and biological family the process of adoption has severed ties and formed bridges to new connections. While there is a celebration of new family beginnings and relationships there are often losses associated with the disconnection from biological family and relationships. Adoption is a lifelong process that doesn't end with the finalization of the adoption. Members of the adoption triad continue to process the adoption and often have many unanswered questions that permeate their lives. Many desire to know the identity, current life circumstance and/or updated medical information of the individual lost through adoption.

Historically, individuals seeking the release of identifying information could do so only by filing a written motion before the clerk of court of original jurisdiction, pursuant to G.S. § 48-9-105. This statute remains unaffected by the amendments made to G.S. § 48-9-104 (b) and can still be used, in lieu of Confidential Intermediary (CI) services, for the purposes of obtaining identifying information or for appointment of a confidential intermediary for those not entitled to contractual CI services.

The North Carolina General Assembly in Session Law 2007-262; House Bill 445 initially amended G.S. § 48-9-104, Release of Identifying Information, to add subsection (b), in 2008. Further amendments to this statute broaden the eligibility of those who may request CI services, effective October 1, 2010. This legislation provides that a child-placing agency licensed by the North Carolina Division of Social Services (Division) or a North Carolina county department of social services may agree to be a Confidential Intermediary (CI) without the need for an appointment order from the court for the following:

A. **Biological Parent**: by facilitating contact or the sharing of non-identifying and/or identifying information with adult adoptees with the written consent of the parties to the contact and/or the sharing of information.

B. **Adult Adoptee**: by facilitating contact or the sharing of non-identifying and/or identifying information with biological parents with the written consent of the parties to the contact and/or the sharing of information.

C. **Adult Biological Sibling of an Adult Adoptee:** by facilitating contact or the sharing of non-identifying and/or identifying information with biological siblings of an adult adoptee with the written consent of the parties, **including that of an any living biological parent(s),** to the contact and/or the sharing of information.

D. **Adult Biological Half Sibling of an Adult Adoptee;** by facilitating contact or the sharing of non-identifying and/or identifying information with biological half siblings of an adult adoptee with the written consent of the parties, **including that of an any living biological parent(s),** to the contact and/or the sharing of information.

E. **Adult Family Member of a Deceased Biological Parent:** by facilitating contact or the sharing of non-identifying and/or identifying information with a spouse, child, stepchild, parent, stepparent, grandparent or grandchild of a deceased biological parent with the written consent of the parties, **including that of an any living biological parent(s),** to the contact and/or the sharing of information.

F. **Adult Family Member of a Deceased Adoptee:** by facilitating contact or the sharing of non-identifying and/or identifying information with a spouse, child, stepchild, parent, stepparent, grandparent or grandchild of a deceased adoptee with the written consent of the parties, **including that of an any living biological parent(s),** to the contact and/or the sharing of information.

G. **Adoptive Parent:** by obtaining and sharing **only** current non-identifying birth family health information for a minor adoptee with the written consent of the parties to the sharing of non-identifying information.

The CI agency can choose to provide services to one or more of these categories of individuals listed above.

II. WHO IS ELIGIBLE TO ACCESS CONFIDENTIAL INTERMEDIARY SERVICES

A. ELIGIBILITY FACTORS

1. The adoption decree must have been issued by a North Carolina court of competent jurisdiction. Adoptions finalized outside of the state of North Carolina are subject to the laws of that state. G.S. § 48-9-104 (b) does not supersede the laws of another state, regardless of whether a North Carolina agency held custody of the child prior to the finalization of the adoption. If the adoption was finalized in North Carolina, the North Carolina Confidential Intermediary laws apply, no matter where the child came from.

2. In order to be eligible to receive the Confidential Intermediary Services, an individual must be:

    a. an adoptee who is 18 years old or older

    b. a birth parent of an adoptee who is now 18 years old or older.

    c. a person who is 18 years old or older and is the biological sibling of an adoptee who is now 18 years old or older.

    d. a person who is 18 years old or older and is the biological half sibling of an adoptee who is now 18 years old or older

    e. a person who is 18 years old or older and is a family member of a deceased adoptee

f. a person who is 18 years old or older and is a family member of a deceased biological parent.

g. an adoptive parent of a minor adoptee who is accessing this service to try and obtain only non-identifying medical information from the birth parents.

Note: Family member is defined as a spouse, child, stepchild, parent, stepparent, grandparent or grandchild.

B. CONFLICT OF INTEREST

If an eligible individual works for the agency that handled the adoption, there is a potential for a conflict of interest. The agency for which the individual works should refer him to another DSS or licensed adoption agency. The agency may also determine what other relationships may be a conflict, such as members of the local DSS Board, Board of Directors for the licensed adoption agency, etc.

C. VERIFICATIONS OF IDENTITY AND RELATIONSHIP

Before a CI agency enters into a CI agreement with an individual, the CI agency must verify the identity of the individual. To establish identity, the document must provide information related to the person named on the document. A government-issued picture identification card is the most reliable method of verifying identity. Examples of such cards are United States passports, driver's licenses, military ID's, school ID's, etc. If the individual does not have a government-issued picture identification card, it is permissible to accept three or more documents that reasonably corroborate the identity of the individual. These documents must contain the individual's name, plus any additional information establishing the individual's identity. Acceptable documents include high school and college diplomas from accredited institutions, marriage certificates, divorce decrees, property deeds/titles and employee identification cards. All documents used must contain consistent identifying information.

In order to permit release of any identifying information to an adult adoptee, a biological parent, an adult sibling or half sibling of an adult adoptee, an adult family member of a deceased adoptee or an adult family member of a deceased biological parent, the relationship of the lineal descendent to the adoptee or biological parent must also be verified in addition to identity verification of the applicant. Relationship verification should be verified through certified birth, death and/or marriage certificates. Flexibility is possible in those cases where a certified copy is no longer available. The CI agency will determine if copies that are not certified are acceptable. Examples of possibly acceptable documents that are not certified may include hospital-issued documents, mother's copy of the birth certificate, funeral home documents, newspaper obituaries, etc.

In cases where an individual contacts the Division of Social Services Adoption Review Team directly, staff with the Adoption Review and Indexing Team will verify the identity and relationship of the individual in the same manner as above, prior to the release of information.

III. AGENCIES SERVING AS CONFIDENTIAL INTERMEDIARIES

A. WHAT AGENCIES CAN ACT AS CONFIDENTIAL INTERMEDIARIES

Only county departments of social services or child-placing agencies licensed by the NC Division of Social Services may act as a CI agency. It is entirely voluntary on the part of the individual county department of social services or licensed adoption agency as to whether they will act as a CI agency and provide these services. It is also the decision of the individual county department of social services or licensed adoption agency as to what services they will provide and for whom. Some agencies may decide to provide services only to those individuals whose adoption case was handled by their agency. Others may choose to provide CI services to anyone. Some agencies may decide to provide CI services to adult adoptees only and others may decide to serve all of the eligible categories of individuals.

B. FEES FOR CONFIDENTIAL INTERMEDIARY SERVICES

Agencies acting as a Confidential Intermediary may set their own fee for this service. CI agencies will need to develop a fee structure that can be supported by reasonable and customary cost methodology. The actual fees charged will need to take into consideration the specific task being performed, and the role of the staff person performing the task.

Some of the activities to be considered in developing a fee structure include:

- Providing initial consultation regarding the agency's policy in addressing the changes to the laws.
- Conducting an in-house record review and a search for the person listed above, including, but not limited to, an Internet based search;
- Initiating contact with any person found in an attempt to obtain current non-identifying health and background information; and/or
- Ascertaining that person's willingness to share identifying information or have contact with the individual.
- Providing the intermediary services needed to ensure all parties are addressing the psycho-social issues in a healthy and productive manner.

Once activities have been identified, there should be consideration about the staff and overhead costs involved when developing a fee structure. It is recommended that agencies use a similar process to other fees set by the agency and consult with other agencies serving as Confidential Intermediaries as needed.

Agencies should consider all potential services to insure the fee developed encompasses all relevant costs. Consideration should be made regarding circumstances where the individual being sought is deceased as an additional fee for acquiring a death certificate may be necessary. County departments of social services should specifically reference G.S. §108A-10 for statutory requirements regarding fees.

At the CI agency's discretion, the fee structure may include circumstances for which fees may be waived or reduced, for example, for indigent individuals. Written information regarding the CI agency fee structure must be available to anyone inquiring about CI services. Applicants must be provided with a written copy of the fee policy.

Note: Fees for CI services may not be charged in situations where the person requesting the information is entitled to it pursuant to statute or when the agency is required by statute to make an effort to find someone in order to share specific information. The agency must provide non-identifying information, upon request, to an adoptive parent or adult adoptee. (G.S. § 48-9-103(a)) The agency may provide non-identifying information about the adoptee's present circumstances, if known, to a birth parent, adult birth sibling or guardian of a minor birth sibling. (G.S. § 48-9-103(f)). In both these instances, the agency may only charge a reasonable fee for locating and making copies of this non-identifying information. (G.S. § 48-9-103(g)) Additionally, if an agency receives information from the adoptee's birth parent or family about a health or genetic condition that may affect the health of the adoptee or the adoptee's child, the agency must make a reasonable effort to contact and forward this information to an adult adoptee or the adoptive parent of a minor adoptee. G.S. § 48-9-103(e). This service must be provided without charge.

C. REPORTING COUNTY SOCIAL WORK TIME

Effective January 1, 2008, two new Service Codes for the DSS-4263, Day Sheet have been established. These codes are 017 – Adoption Access (CI) and 018 – Adoption Access (CI) Case Management. (Refer to SIS Change Notice 03-07 for full instructions.) These codes are to be used by county staff to document activities and services to clients when acting as Confidential Intermediary in response to requests for access to Adoption records on behalf of an adult adoptee or their adult lineal descendant (if the adoptee is deceased).

017 – Adoption Access (CI)

This code should be used to report activities such as responding to inquiries, Intake, providing general services, program management and other non-client-specific activities related to acting as Confidential Intermediary. Also, this is the code that should be used if one county DSS is responding to a request for searching agency records for a CI agency. Use on the DSS-4263 (no Client ID required). It is valid with Program Code N.

018 – Adoption Access (CI) Case Management

This code should be used, upon opening a case, to document client-specific activities such as records research and review, travel, case management, providing information and support, and other activities associated with serving as Confidential Intermediary. Use on the DSS-5027, DSS-4263 (Client ID required) and the DSS-1571 Part IV (Client ID required) when reporting purchased services. It is valid with Program Code N.

Note: These Service Codes, when reported on the DSS-4263 Worker Daily Report of Services, must be changed to Program Code N – Non-DSS Reimbursable. Instructions for the DSS-1571 Part I and IV will be provided by the Controller's Office.

Other Changes

DSS-5027 Field 18: "State Use" code "1" - "Indigent Recipient" has been added to Appendix A. This code is to be used when it has been determined that the individual for whom the agency is providing Adoption Access Case Management services is unable to pay.

D. CONFIDENTIAL INTERMEDIARY PROCESS

An individual seeking CI services may initially contact an agency by telephone, mail or in person. The agency should be prepared to answer initial questions regarding eligibility and the process. Information such as cost, time frames involved and possible outcomes can be generally discussed with the prospective individual seeking CI services. The agency contacted may decide not to serve as a confidential intermediary. In that case, the agency should refer the individual to a list of licensed adoption agencies and county departments of social services that have designated themselves as CI agencies. This list is maintained on the Division website at: http://www.ncdhhs.gov/dss/adoption/index.html

Even if a county department of social services or licensed adoption agency decides not to provide Confidential Intermediary Services, they may still be contacted by another agency providing those services seeking information from the agency record. All of these agencies should be prepared to respond to these requests, even if it is to refer the requesting agency to the Division of Social Services, Adoption Review Team.

Once an individual determines that he/she is ready to pursue CI services from a CI agency, the individual will be given and asked to complete an ***Application for Confidential Intermediary Services*** (DSS 5031-ia), which must be notarized.

A ***Confidential Intermediary Agreement*** will also be completed by both the individual and the agency (DSS-5030-ia). This Agreement will outline the expected services and will state plainly the fees for the services. The agency will provide the individual with a signed copy of all forms. Agencies Services will include the following:

- conduct an in-house record review and a search for the person sought, including, but not limited to, an Internet based search;
- initiate contact with any person found in an attempt to obtain current non-identifying health and background information; and/or
- ascertain that person's willingness to share identifying information and/or to have contact with the individual.

Before a CI search for any adult sibling or half sibling of an adult adoptee, an adult family member of a deceased adoptee or an adult family member of a deceased biological parent may be initiated by an agency the written consent of any living biological parent must first be obtained.

In the event that confidential intermediary services are provided to the adoptive parent of a minor adoptee in accordance with G.S. § 48-9-104 (b), the agency's role shall be limited to a search for the adoptee's birth parents to obtain current non-identifying health and background information. The CI agency must not share identifying information and need not ascertain the person's willingness to have contact with the minor adoptee. If the birth parent indicates a willingness to have contact with or be identified to the adult adoptee in the future, this intent can be documented in the CI file in case future CI services are requested by the adult adoptee.

In addition to the CI Services Application and Agreement, the ***Release of Liability and Agreement to Hold Harmless*** form (DSS-5033-ia) must also be signed by the applicant for CI Services and notarized.

It is suggested that any search pursuant to this agreement will be conducted for a period of 90 days, after which a written report will be sent to the individual with the results of the search thus far. At that point the CI agency and the individual will need to determine whether they each wish to continue or amend the search process and renegotiate fees, or terminate the search services.

In the event the individual sought has been located and agrees to contact with the applicant, county departments of social services and licensed adoption agencies should respond within 30 days to any request to facilitate that contact.

E. RESOURCES FOR SEARCHES

Systems restricted by federal or state confidentiality laws and guidelines cannot be used for these searches. Any public record can be used, such as DMV or tax records. Internet search engines and public or private sites can be used at the agency's discretion. There is, however, a cost for the use of some of these sites. Clarification has been obtained that CI agencies may not access Child Support Enforcement for access to their information in conducting searches, as this access is not legally permissible.

F. SUPPORTIVE SERVICES

County departments of social services and licensed child-placing agencies that choose to act as CI agencies should designate an individual or a unit to handle the CI requests and services. This process could be emotionally difficult for some people, and the staff designated to provide the CI services need to be adequately trained to manage these cases with sensitivity and social work skill. When an agency agrees to provide CI services, time should be spent with the person seeking those services discussing possible outcomes and helping them manage their expectations. The agency should also continue to assess the person's needs as the process continues.

There are several possible outcomes in the provision of CI services to the individual requesting the services:

1. Updated non-identifying information

2. Unsuccessful attempts to locate or contact anyone

3. Persons are located but may be unwilling to consent to releasing information or to contact with the person seeking the CI services

4. Persons are located and agree to meet with the person seeking the CI services

5. Information indicates that the person being located is deceased

Regardless of the outcome, the agency should continue to be supportive of the person and assess their needs throughout the process. If services needed to support the individual are not available within the CI agency, appropriate referrals to community services should be offered.

Also, the CI staff who makes contact with the individual being sought should be prepared to address a variety of potential circumstances, such as:

1. The individual being sought for identifying information may welcome the contact and be open to the request for information or to a potential meeting.

2. A birth parent being sought may now have a family with whom they have never disclosed the fact that they had a previous child that was adopted. Some of the birth parents may have released their child for adoption voluntarily, or they may have had their rights terminated. In either case, the CI staff making the contact should be prepared for potential reactions.

3. An adult adoptee being sought may not know that they were adopted. This disclosure may be traumatic for many reasons. Care should be taken in approaching any adult adoptee for the first time. CI agencies are encouraged to develop a method for initial contact with adult adoptees. For example, it may be advisable to begin with a request for the person to contact the CI staff in person regarding a family matter.

4. A birth parent being contacted by a lineal descendent of a deceased adoptee may face issues of grief and loss in learning that their child is deceased.

5. A person contacted may, in fact, not be the actual person being sought.

Regardless of the circumstance, the agency should be supportive of these persons being contacted also and assess their needs throughout the process. If services needed to support the individual are not available within the CI agency, appropriate referrals to community services should be offered.

Throughout the process of a CI search the agency is responsible for ensuring that confidential information remains protected and agencies must contact individuals in a manner reasonably calculated to prevent incidental disclosure of confidential information.

G. FACILITATING A MEETING

The CI agency may act in the role of facilitator when a meeting between parties is requested. The agency representative should prepare all parties involved carefully before the meeting. In addition to arranging the meeting, the agency representative should provide introductions and help guide the discussion during the visit.

The agency should provide good social work practice that includes assessment and support long enough to determine if there is a need for additional services. It may be necessary to spend additional time after the meeting helping individuals process the results the meeting and what it may have meant for them. If at any time a more significant need is identified, the agency representative should discuss available services through referral and help facilitate contact with the appropriate referral agency.

When acting as the confidential intermediary for an individual, CI agencies must be sensitive to the sharing of identities and the impact of those revelations to the individual. To that end, agencies should thoroughly process the information and discuss the intended and unintended consequences with the individual. CI agencies may offer limited social work counseling to the individual but should also refer the individual to professional counseling services if needed.

IV. INDIVIDUALS SEEKING THE SERVICES OF A CONFIDENTIAL INTERMEDIARY

A. AUTHORIZED DISCLOSURES

If the individual seeking the services of a CI does not know the agency that handled the adoption, they should be advised to submit a request for assistance in identifying the agency that approved the adoption to:

NC Division of Social Services
Adoption Review Team
325 N. Salisbury Street
Mail Service Center 2425
Raleigh, NC 27699-2425
Attn: CI Services

If the individual knows the agency that handled the adoption, they may contact that agency directly. However, it should be understood that agency participation in CI services is voluntary.

A complete listing of county departments of social services, agencies can be found on line at: http://www.dhhs.state.nc.us/dss/local/index.htm.

A complete listing of North Carolina licensed adoption agencies can be found at: http://www.dhhs.state.nc.us/dss/licensing/listings.htm. Once there, click on the "Adoption Agency" link.

A listing of all of the agencies that have agreed to provide Confidential Intermediary Services can be found at: http://www.ncdhhs.gov/dss/adoption/index.htm

In adoption cases where one or more agencies were involved in the adoption, an individual may contact either in their quest to search for updated health/non-identifying information or the sharing of identifying information. However, they should begin with the agency that approved the adoption.

If the individual has solicited the services of a CI agency, and the CI agency requires the assistance of the Division in obtaining this agency information, the CI must provide to Adoption Review Team a copy of the ***Confidential Intermediary Agreement*** and ***Application for Confidential Intermediary Services***. The Adoption Review Team will need these documents to show proof of the CI's involvement and to search for requested information. The Adoption Review Team will research the information and provide the name of the county department of social services or licensed adoption agency that handled the adoption.

If the county department of social services or licensed adoption agency cannot locate the records for the client, the agency can submit a request by fax to the NC Division of Social Services, Adoption Review Team, attention CI Services. The fax number is 919-733-1123.

An agency acting as a CI agency but that did not approve the adoption can request information directly from the county department of social services or licensed agency that did approve the adoption. The CI agency must provide to that agency a copy of the ***Confidential Intermediary Agreement*** and ***Application for Confidential Intermediary Services*** forms. The agency will need these documents to show proof of the CI's involvement and to search for requested information.

The agency that approved the adoption may require the CI agency to pay a fee for their search for the requested information, pursuant to G.S. § 48-9-103 (g), which states: "the Department, the court, or agency may charge a reasonable fee for locating and making copies of a report or information.

If the CI agency is unable to obtain needed information from the agency that approved the adoption, the CI agency should contact the NC Division of Social Services, Adoption Review Team.

Any CI agency can request information directly from the NC Division of Social Services, Adoption Review Team, even if they were not the agency that approved the adoption. The agency will need to submit a copy of the ***Confidential Intermediary Agreement*** and ***Application for Confidential Intermediary Services*** and forms. The forms can be mailed or faxed to the Division.

B. WHEN A SEARCH RESULTS IN SUCCESSFUL LOCATION

If the CI agency locates the individual they are searching for, the CI agency will determine their desire to provide updated non-identifying medical information, to share identifying information and/or to have personal contact. If the person being contacted agrees to releasing information or to the CI agency facilitating contact with the other party, both that person and the initial applicant for CI services will be required to sign ***Consent to Release of Information And/Or Contact*** forms (DSS-5032-ia).

If the identified party consents to release of identifying information, updated non-identifying medical information and/or personal contact, they will also be required to sign the ***Release of Liability and Agreement to Hold Harmless*** form. The Confidential Intermediary will then facilitate this sharing of information or contact as specified by the person being contacted. Depending on what is specified, the Confidential Intermediary will provide:

1. Non-identifying health information in writing.
2. Identifying information in writing.
3. Facilitation of contact between parties.

Face to face contact shall take place at the CI agency in an appropriate space, such as a visitation room. Telephone contact may be an option.

Staff facilitating the contact should provide introductions and remain available to any of the participants.

The Confidential Intermediary is not responsible for any contact between parties beyond the first contact.

If the identified party refuses to participate in the sharing of identifying information or if the search does not uncover any possible contact information, the Confidential Intermediary must document this and provide a response in writing to the person originally seeking information or contact. The Division recommends that this should not exceed 90 days without a subsequent agreement between the Confidential Intermediary and the client.

It is important to recognize that the CI law does not open confidential adoption records. Nothing in CI law allows the release of any adoption records in the possession of an agency or the Division, or information from those records, except non-identifying information that may be released pursuant to G.S. 48-9-103. The adoption records remain confidential and disclosure is subject to court order under G.S. 48-9-105.

C. WHEN A SEARCH RESULT DETERMINES AN INDIVIDUAL IS DECEASED

If the CI search reveals that the person who is the subject of the search is deceased the Confidential Intermediary may obtain a copy of the death certificate from the State Registrar and deliver it to the person who initiated the search, however, collateral information obtained about the cause of death or other birth or adoptive family information may not be disclosed since consent to do so cannot be secured except upon the order of release of information to the petitioner by the Clerk of Court.

If a birth parent discloses information to the CI about how to locate the other birth parent, the CI is obligated to obtain a notarized ***Consent of Release of Information And/Or Contact*** from the other birth parent before that person's information can be shared with the adult adoptee or lineal descendent of a deceased adoptee. The CI is not responsible for disclosure of information between parties.

D. CONFIDENTIALITY AND STORAGE OF RECORDS

CI records are confidential and the CI agency must follow the same protocol for maintaining confidentiality and storage of CI services records as is used with closed adoption records) http://info.dhhs.state.nc.us/olm/manuals/dss/csm-50/man/CSs1303.pdf).