



INTERCOUNTRY ADOPTIONS SUBCOMMITTEE RECOMMENDATIONS & DISCUSSION

Summary of Recommendations

- 1) ICPC requirements should not apply to any child entering the United States from a foreign country for the purpose of adoption.
- 2) In the event of disruption or dissolution of the adoptive placement, interstate placements should be conducted in accordance with the policies for private domestic placements as determined by the private/independent placement working group. In event of a disruption or dissolution of an intercountry adoption, ICPC should ensure that all documents from the foreign country regarding the child's history, e.g. passports, immigration documentation, records regarding prior placements or adoptions, and citizenship records are delivered to the new guardian of the child.
- 3) The subcommittee acknowledged that the following issues were not in the purview of and interstate compact, but recommends that states review their regulations regarding the assignment of legal and financial responsibility for the care of the child to the adoption service provider placing the child; liability insurance; consumer protection measures, or contract requirements.

Discussion

1. Placement of children from foreign countries to the United States

Recommendation: *ICPC requirements should not apply to any child entering the United States from a foreign country for the purpose of adoption.*

In developing this recommendation, the working group reviewed the following:

- ▶ Different classifications of children entering the U.S. for the purposes of adoption;
- ▶ Purposes of ICPC review prior to entry of child into the U.S.;
- ▶ Required procedures under the Immigration and Nationality Act for children entering the U.S. for the purpose of adoption.

Discussion: Children entering the U.S. for the purposes of adoption fall generally into three categories: a) those whose adoptions are considered full and final under the laws of both the United States and the foreign country; b) those whose adoptions are considered full and final in the foreign

country but which do not meet the definition of full and final adoptions under U.S. law; and c) those who are placed into the guardianship of either the adoptive parents, the child-placing agency, or both, for the purpose of adoption in the U.S.

The purpose of ICPC review is to confirm that the pre-adoption requirements of the State have been met, that the appropriate consents to adoption have been obtained, that the adoptive parents have a valid home study approving them as adoptive parents, and that the placement is appropriate for the child and the family.

All children entering the United States for the purpose of adoption by U.S. citizens residing in the United States are required to obtain an U.S. immigrant visa. There are two types of visas that apply to adopted children, depending on the type of placement.

IR-3 visas are granted to children whose adoptions are full and final under both U.S. law and the laws of the foreign country prior to emigration to the United States.

IR-4 visas are granted to children who are adopted abroad, but whose adoptions are not considered final under U.S. law, and to children who have been placed in the guardianship of adoptive parents, or adoption service providers, for adoption in the United States.

Both IR-3 and IR-4 visas are issued after a two-stage orphan petition process through Citizenship and Immigration Services (CIS, formerly INS). Regulations for orphan petitions are contained in 8 CFR §204.3. Petitioning for an orphan involves two distinct determinations. The first determination concerns the advanced processing application which focuses on the ability of the prospective adoptive parents to provide a proper home environment and on their suitability as parents. The second determination focuses on whether the child is an orphan under immigration law.

The approval process *for prospective adoptive parents* is governed by the following regulations contained in 8CFR, §204.3 (c)(e) and (f):

(c) Supporting documentation for an advanced processing application. The prospective adoptive parents may file an advanced processing application before an orphan is identified in order to secure the necessary clearance to file the orphan petition. Any document not in the English language must be accompanied by a certified English translation.

(1) Required supporting documentation that must accompany the advanced processing application. The following supporting documentation must accompany an advanced processing application at the time of filing:

(i) Evidence of the petitioner's United States citizenship as set forth in Sec. [204.1\(g\)](#) and, if the petitioner is married and the married couple is residing in the United States, evidence of the spouse's United States citizenship or lawful immigration status;

(ii) A copy of the petitioner's marriage certificate to his or her spouse, if the petitioner is currently married;

(iii) Evidence of legal termination of all previous marriages for the petitioner and/or spouse, if previously married; and (Amended effective 3/29/98; [63 FR 12979](#))

(iv) Evidence of compliance with preadoption requirements, if any, of the State of the orphan's proposed residence in cases where it is known that there will be no adoption abroad, or that both members of the married prospective adoptive couple or the unmarried prospective adoptive parent will not personally see the child prior to, or during, the adoption abroad, and/or that the adoption abroad will not be full and final. Any preadoption requirements which cannot be met at the time the advanced processing application is filed because of operation of State law must be noted and explained when the application is filed. Preadoption requirements must be met at the time the petition is filed, except for those which cannot be met until the orphan arrives in the United States; and (Redesignated as (c)(1)(iv) effective 3/29/98, previously (c)(1)(v); 63 FR 12979)

(2) Home study. The home study must comply with the requirements contained in paragraph (e) of this section. If the home study is not submitted when the advanced processing application is filed, it must be submitted within one year of the filing date of the advanced processing application, or the application will be denied pursuant to paragraph (h)(5) of this section.

(3) After receipt of a properly filed advanced processing application, the Service will fingerprint each member of the married prospective adoptive couple or the unmarried prospective adoptive parent, as prescribed in § 103.2(e) of this chapter. The Service will also fingerprint each additional adult member of the prospective adoptive parents' household, as prescribed in § 103.2(e) of this chapter. The Service may waive the requirement that each additional adult member of the prospective adoptive parents' household be fingerprinted when it determines that such adult is physically unable to be fingerprinted because of age or medical condition. (Paragraph (c)(3) added effective 3/29/98; 63 FR 12979)...

(e) Home study requirements. For immigration purposes, a home study is a process for screening and preparing prospective adoptive parents who are interested in adopting an orphan from another country. The home study should be tailored to the particular situation of the prospective adoptive parents: for example, a family which previously has adopted children will require different preparation than a family that has no adopted children. If there are any additional adult members of the prospective adoptive parents' household, the home study must address this fact. The home study preparer must interview any additional adult member of the prospective adoptive parents' household and assess him or her in light of the requirements of paragraphs (e)(1), (e)(2)(i), (iii), (iv), and (v) of this section. A home study must be conducted by a home study preparer, as defined in paragraph (b) of this section. The home study, or the most recent update to the home study, must not be more than six months old at the time the home study is submitted to the Service. Only one copy of the home study must be submitted to the Service. Ordinarily, a home study (or a home study and update as discussed above) will not have to be updated after it has been submitted to the Service unless there is a significant change in the household of the prospective adoptive parents such as a change in residence, marital status, criminal history, financial resources, and/or the addition of one or more children or other dependents to the family prior to the orphan's immigration into the United States. In addition to meeting any State, professional, or agency requirements, a home study must include the following:

(1) Personal interview(s) and home visit(s). The home study preparer must conduct at least one interview in person, and at least one home visit, with the prospective adoptive couple or the unmarried prospective adoptive parent. Each additional adult member of the prospective adoptive parents' household must also be interviewed in person at least once. The home study report must state the number of such interviews and visits, and must specify any other contacts with the prospective adoptive parents and any adult member of the prospective adoptive parents' household.

(2) Assessment of the capabilities of the prospective adoptive parents to properly parent the orphan. The home study must include a discussion of the following areas:

(i) Assessment of the physical, mental, and emotional capabilities of the prospective adoptive parents to properly parent the orphan. The home study preparer must make an initial assessment of how the physical, mental, and emotional health of the prospective adoptive parents would affect their ability to properly care for the prospective orphan. If the home study preparer determines that there are areas beyond his or her expertise which need to be addressed, he or she shall refer the prospective adoptive parents to an appropriate licensed professional, such as a physician, psychiatrist, clinical psychologist, or clinical social worker for an evaluation. Some problems may not necessarily disqualify applicants. For example, certain physical limitations may indicate which categories of children may be most appropriately placed with certain prospective adoptive parents. Certain mental and emotional health problems may be successfully treated. The home study must include the home study preparer's assessment of any such potential problem areas, a copy of any outside evaluation(s), and the home study preparer's recommended restrictions, if any, on the characteristics of the child to be placed in the home. Additionally, the home study preparer must apply the requirements of this paragraph to each adult member of the prospective adoptive parents' household.

(ii) Assessment of the finances of the prospective adoptive parents. The financial assessment must include a description of the income, financial resources, debts, and expenses of the prospective adoptive parents. A statement concerning the evidence that was considered to verify the source and amount of income and financial resources must be included. Any income designated for the support of one or more children in the care and custody of the prospective adoptive parents, such as funds for foster care, or any income designated for the support of another member of the household must not be counted towards the financial resources available for the support of a prospective orphan. The Service will not routinely require a detailed financial statement or supporting financial documents. However, should the need arise, the Service reserves the right to ask for such detailed documentation.

(iii) History of abuse and/or violence.

(A) Screening for abuse and violence.

(1) Checking available child abuse registries. The home study preparer must ensure that a check of each prospective

adoptive parent and each adult member of the prospective adoptive parents' household has been made with available child abuse registries and must include in the home study the results of the checks including, if applicable, a report that no record was found to exist. Depending on the access allowed by the state of proposed residence of the orphan, the home study preparer must take one of the following courses of action:

(i) If the home study preparer is allowed access to information from the child abuse registries, he or she shall make the appropriate checks for each of the prospective adoptive parents and for each adult member of the prospective adoptive parents' household;

(ii) If the State requires the home study preparer to secure permission from each of the prospective adoptive parents and for each adult member of the prospective adoptive parents' household before gaining access to information in such registries, the home study preparer must secure such permission from those individuals, and make the appropriate checks;

(iii) If the State will only release information directly to each of the prospective adoptive parents and directly to the adult member of the prospective adoptive parents' household, those individuals must secure such information and provide it to the home study preparer. The home study preparer must include the results of these checks in the home study;

(iv) If the State will not release information to either the home study preparer or the prospective adoptive parents and the adult members of the prospective adoptive parents' household, this must be noted in the home study; or

(v) If the State does not have a child abuse registry, this must be noted in the home study.

(2) Inquiring about abuse and violence. The home study preparer must ask each prospective adoptive parent whether he or she has a history of substance abuse, sexual or child abuse, or domestic violence, even if it did not result in an arrest or conviction. The home study preparer must include each prospective adoptive parent's response to the questions regarding abuse and violence. Additionally, the home study preparer must apply the requirements of this paragraph to each adult member of the prospective adoptive parents' household.

(B) Information concerning history of abuse and/or violence. If the petitioner and/or spouse, if married, disclose(s) any history of abuse and/or violence as set forth in paragraph (e)(2)(iii)(A) of this section, or if, in the absence of such disclosure, the home study preparer becomes aware of any of the foregoing, the home study report must contain an evaluation of the suitability of the home for adoptive placement of an orphan in light of this history. This evaluation must include information concerning all arrests or convictions or history of substance abuse, sexual or child abuse, and/or domestic violence and the date of each occurrence. A certified copy of the documentation showing the final disposition of each incident, which resulted in arrest, indictment, conviction, and/or any other judicial or administrative action, must accompany the home study. Additionally, the prospective adoptive parent must submit a signed statement giving details including mitigating circumstances, if any, about each incident. The home study preparer must apply the requirements of this paragraph to each adult member of the prospective adoptive parents' household.

(C) Evidence of rehabilitation. If a prospective adoptive parent has a history of substance abuse, sexual or child abuse, and/or domestic violence, the home study preparer may, nevertheless, make a favorable finding if the prospective adoptive parent has demonstrated appropriate rehabilitation. In such a case, a discussion of such rehabilitation which demonstrates that the prospective adoptive parent is and will be able to provide proper care for the orphan must be included in the home study. Evidence of rehabilitation may include an evaluation of the seriousness of the arrest(s), conviction(s), or history of abuse, the number of such incidents, the length of time since the last incident, and any type of counseling or rehabilitation programs which have been successfully completed. Evidence of rehabilitation may also be provided by an appropriate licensed professional, such as a psychiatrist, clinical psychologist, or clinical social worker. The home study report must include all facts and circumstances which the home study preparer has considered, as well as the preparer's reasons for a favorable decision regarding the prospective adoptive parent. Additionally, if any adult member of the prospective adoptive parents' household has a history of substance abuse, sexual or child abuse, and/or domestic violence, the home study preparer must apply the requirements of this paragraph to that adult member of the prospective adoptive parents' household.

(D) Failure to disclose or cooperate. Failure to disclose an arrest, conviction, or history of substance abuse, sexual or child abuse, and/or domestic violence by the prospective adoptive parents or an adult member of the prospective adoptive parents' household to the home study preparer and to the Service, may result in the denial of the advanced processing application or, if applicable, the application

and orphan petition, pursuant to paragraph (h)(4) of this section. Failure by the prospective adoptive parents or an adult member of the prospective adoptive parents' household to cooperate in having available child abuse registries checked in accordance with paragraphs (e)(2)(iii)(A)(1) and (e)(2)(iii)(A)(1)(i) through (e)(2)(iii)(A)(1)(iii) of this section will result in the denial of the advanced processing application or, if applicable, the application and orphan petition, pursuant to paragraph (h)(4) of this section.

(iv) Previous rejection for adoption or prior unfavorable home study. The home study preparer must ask each prospective adoptive parent whether he or she previously has been rejected as a prospective adoptive parent or has been the subject of an unfavorable home study, and must include each prospective adoptive parent's response to this question in the home study report. If a prospective adoptive parent previously has been rejected or found to be unsuitable, the reasons for such a finding must be set forth as well as the reason(s) why he or she is now being favorably considered as a prospective adoptive parent. A copy of each previous rejection and/or unfavorable home study must be attached to the favorable home study. Additionally, the home study preparer must apply the requirements of this paragraph to each adult member of the prospective adoptive parents' household.

(v) Criminal history. The prospective adoptive parents and the adult members of the prospective adoptive parents' household are expected to disclose to the home study preparer and the Service any history of arrest and/or conviction early in the advanced processing procedure. Failure to do so may result in denial pursuant to paragraph (h)(4) of this section or in delays. Early disclosure provides the prospective adoptive parents with the best opportunity to gather and present evidence, and it gives the home study preparer and the Service the opportunity to properly evaluate the criminal record in light of such evidence. When such information is not presented early in the process, it comes to light when the fingerprint checks are received by the Service. By that time, the prospective adoptive parents are usually well into preadoption proceedings of identifying a child and may even have firm travel plans. At times, the travel plans have to be rescheduled while the issues raised by the criminal record are addressed. It is in the best interest of all parties to have any criminal records disclosed and resolved early in the process.

(3) Living accommodations. The home study must include a detailed description of the living accommodations where the prospective adoptive parents currently reside. If the prospective adoptive parents are planning to move, the home study must include a description of the living accommodations where the child will reside with the prospective adoptive parents, if known. If the prospective adoptive parents are residing abroad at the time of the home study, the home study must include a description of the living accommodations where the child will reside in the United States with the prospective adoptive parents, if known. Each description must include an assessment of the suitability of accommodations for a child and a

determination whether such space meets applicable State requirements, if any.

(4) Handicapped or special needs orphan. A home study conducted in conjunction with the proposed adoption of a special needs or handicapped orphan must contain a discussion of the prospective adoptive parents' preparation, willingness, and ability to provide proper care for such an orphan.

(5) Summary of the counseling given and plans for post-placement counseling. The home study must include a summary of the counseling given to prepare the prospective adoptive parents for an international adoption and any plans for post-placement counseling. Such preadoption counseling must include a discussion of the processing, expenses, difficulties, and delays associated with international adoptions.

(6) Specific approval of the prospective adoptive parents for adoption. If the home study preparer's findings are favorable, the home study must contain his or her specific approval of the prospective adoptive parents for adoption and a discussion of the reasons for such approval. The home study must include the number of orphans which the prospective adoptive parents may adopt. The home study must state whether there are any specific restrictions to the adoption such as nationality, age, or gender of the orphan. If the home study preparer has approved the prospective adoptive parents for a handicapped or special needs adoption, this fact must be clearly stated.

(7) Home study preparer's certification and statement of authority to conduct home studies. The home study must include a statement in which the home study preparer certifies that he or she is licensed or otherwise authorized by the State of the orphan's proposed residence to research and prepare home studies. In the case of an orphan whose adoption was finalized abroad and whose adoptive parents reside abroad, the home study preparer must certify that he or she is licensed or otherwise authorized to conduct home studies under the law of any State of the United States, or authorized by the adoption authorities of the foreign country to conduct home studies under the laws of the foreign country. In every case, this statement must cite the State or country under whose authority the home study preparer is licensed or authorized, the specific law or regulation authorizing the preparer to conduct home studies, the license number, if any, and the expiration date, if any, of this authorization or license.

(8) Review of home study. If the prospective adoptive parents reside in a State which requires the State to review the home study, such a review must occur and be documented before the home study is submitted to the Service. If the prospective adoptive parents reside abroad, an appropriate public or private adoption agency licensed, or otherwise authorized, by any State of the United States to place children for adoption, must review and favorably recommend the home study before it is submitted to the Service.

(9) Home study updates and amendments.

(i) Updates. If the home study is more than six months old at the time it would be submitted to the Service, the prospective adoptive parents must ensure that it is updated by a home study preparer before it is submitted to the Service. Each update must include screening in accordance with paragraphs (e)(2)(iii)(A) and (B) of this section.

(ii) Amendments. If there have been any significant changes, such as a

change in the residence of the prospective adoptive parents, marital status, criminal history, financial resources, and/or the addition of one or more children or other dependents to the family, the prospective adoptive parents must ensure that the home study is amended by a home study preparer to reflect any such changes. If the orphan's proposed State of residence has changed, the home study amendment must contain a recommendation in accordance with paragraph (e)(8) of this section, if required by State law. Any preadoption requirements of the new State must be complied with in the case of an orphan coming to the United States to be adopted.

(10) "Grandfather" provision for home study. A home study properly completed in conformance with the regulations in force prior to September 30, 1994, shall be considered acceptable if submitted to the Service within 90 days of September 30, 1994. Any such home study accepted under this "grandfather" provision must include screening in accordance with paragraphs (e)(2)(iii)(A) and (B) of this section. Additionally, any such home study submitted under this "grandfather" provision which is more than six months old at the time of its submission must be amended or updated pursuant to the requirements of paragraph (e)(9) of this section.

(f) State preadoption requirements.

(1) General. Many States have preadoption requirements which, under the Act, must be complied with in every case in which a child is coming to such a State as an orphan to be adopted in the United States.

(2) Child coming to be adopted in the United States. An orphan is coming to be adopted in the United States if he or she will not be or has not been adopted abroad, or if the unmarried petitioner or both the married petitioner and spouse did not or will not personally see the orphan prior to or during the adoption proceeding abroad, and/or if the adoption abroad will not be, or was not, full and final. If the prospective adoptive parents reside in a State with preadoption requirements and they plan to have the child come to the United States for adoption, they must submit evidence of compliance with the State's preadoption requirements to the Service. Any preadoption requirements which by operation of State law cannot be met before filing the advanced processing application must be noted. Such requirements must be met prior to filing the petition, except for those which cannot be met by operation of State law until the orphan is physically in the United States. Those requirements which cannot be met until the orphan is physically present in the United States must be noted.

(3) Special circumstances. If both members of the prospective adoptive couple or the unmarried prospective adoptive parent intend to travel abroad to see the child prior to or during the adoption, the Act permits the application and/or petition, if otherwise approvable, to be approved without preadoption requirements having been met. However, if plans change and both members of the prospective adoptive couple or the unmarried prospective adoptive parent fail to see the child prior to or during the adoption, then preadoption requirements must be met before the immigrant visa can be issued, except for those preadoption requirements that cannot be met until the child is physically in the United States because of operation of State law.

(4) Evidence of compliance. In every case where compliance with preadoption requirements is required, the evidence of compliance must be in accordance with applicable State law, regulation, and procedure.

The approval process *for the child* is governed by the following regulations contained in 8CFR, §204.3 (d):

(1) Filing an orphan petition after the advanced processing application has been approved. The following supporting documentation must accompany an orphan petition filed after approval of the advanced processing application:

(i) Evidence of approval of the advanced processing application;

(ii) The orphan's birth certificate, or if such a certificate is not available, an explanation together with other proof of identity and age;

(iii) Evidence that the child is an orphan as appropriate to the case:

(A) Evidence that the orphan has been abandoned or deserted by, separated or lost from both parents, or that both parents have disappeared as those terms are defined in paragraph (b) of this section; or

(B) The death certificate(s) of the orphan's parent(s), if applicable; or

(C) If the orphan has only a sole or surviving parent, as defined in paragraph (b) of this section, evidence of this fact and evidence that the sole or surviving parent is incapable of providing for the orphan's care and has irrevocably released the orphan for emigration and adoption; and

(iv) Evidence of adoption abroad or that the prospective adoptive parents have, or a person or entity working on their behalf has custody of the orphan for emigration and adoption in accordance with the laws of the foreign-sending country:

(A) A legible, certified copy of the adoption decree, if the orphan has been the subject of a full and final adoption abroad, and evidence that the unmarried petitioner, or married petitioner and spouse, saw the orphan prior to or during the adoption proceeding abroad; or

(B) If the orphan is to be adopted in the United States because there was no adoption abroad, or the unmarried petitioner, or married petitioner and spouse, did not personally see the orphan prior to or during the adoption proceeding abroad, and/or the adoption abroad was not full and final:

(1) Evidence that the prospective adoptive parents have, or a person or entity working on their behalf has, secured custody of the orphan in accordance with the laws of the foreign-sending country;

(2) An irrevocable release of the orphan for emigration and adoption from the person, organization, or competent authority which had the immediately previous legal custody or control over the orphan if the adoption was not full and final under the laws of the foreign-sending country;

(3) Evidence of compliance with all preadoption requirements, if any, of the State of the orphan's proposed residence. (Any such requirements that cannot be complied with prior to the orphan's arrival in the United States because of State law must be noted and explained); and

(4) Evidence that the State of the orphan's proposed residence allows readoption or provides for judicial recognition of the adoption abroad if there was an adoption abroad which does not meet statutory requirements pursuant to section 101(b)(1)(F) of the Act, because the unmarried petitioner, or married petitioner and spouse, did not personally see the orphan prior to or during the adoption proceeding abroad, and/or the adoption abroad was not full and final.

In reviewing the above mentioned federal regulations, the working group noted that federal law provides for ensuring that:

- ▶ All pre-adoption requirements of the State of proposed residence are met;
- ▶ The prospective adoptive parents are qualified to be adoptive parents,
- ▶ Appropriate consents are signed;
- ▶ The placement is appropriate for the child and family;
- ▶ All such regulations apply in *all* cases in which the child enters the U.S., even those in which the child enters under a guardianship arrangement for the purpose of adoption.

The working group also reviewed the situation of a child coming into the United States where guardianship of the child is granted to a child placing agency in one state and custody is granted to the prospective adoptive parent in another state. As all requirements noted above apply, the only function not directly addressed through the immigration process is the consent of the adoption service provider following the period of post placement supervision. The working group determined that obtaining the consent of the adoption service provider would be required by the court at the time of adoption and thus this function also did need to be reviewed by ICPC.

The working group has therefore concluded that the ICPC process is duplicative of the federal immigration process and that ICPC requirements should not apply to any child entering the United States from a foreign country for the purpose of adoption.

2. Disruption or dissolution of international placements

Recommendation: *In the event of disruption or dissolution of the adoptive placement, interstate placements should be conducted in accordance with the policies for private domestic placements as determined by the private/independent placement working group.*

The working group discussed various scenarios in which an adoptive placement would disrupt prior to finalization or an adoption is dissolved after finalization, including:

1. The prospective adoptive parents complete an adoption in the foreign country, but it is not yet final under U.S. law and the child enters in the full legal and physical custody of the adoptive parents on an IR-4 visa;

2. The prospective adoptive parents complete an adoption in the foreign country and it is considered full and final under the law of both the foreign country and immigration law of the United States, but is not considered full and final under the law of the State of residence, and the child enters on either an IR-3 or IR-4 visa;
3. The prospective adoptive parents complete an adoption considered final in all jurisdictions and the child enters on an IR-3 visa;
4. The prospective adoptive parents receive guardianship of the child from the foreign country and the child enters the U.S. on an IR-4 visa for the purposes of an adoption to be finalized at a later date;
5. The foreign country grants guardianship of the child to an adoption service provider in one state and custody of the child to a prospective adoptive parent in another state.

Discussion: In each scenario it is noted that the primary issue revolves around which entity assumes guardianship and custody of the child in the event of disruption or dissolution. The working group noted that currently ICPC is only involved in cases in which an adoption is not considered full and final abroad (scenarios 4 and 5 above). However, it is equally likely that adoptive placements will disrupt prior to finalization in scenarios 1 and 2.

When discussing the likely outcomes under scenarios 4 and 5, the working group noted that because ICPC had been involved, it may be clear which entity and/or state would have been assigned responsibility for the care of and re-placement of the child, whereas in scenarios 1 and 2 it is possible that no one would be willing to claim responsibility unless it was required by contract provisions regarding the placement, or by the law of the State's child of residence.

In this regard, it was believed that ICPC involvement did serve as a protection for children in placements 4 and 5 as it is currently handled. Solving the discrepancy between the handling of scenarios 1 and 2 and those of 4 and 5 would require either extending ICPC involvement to all intercountry adoption placements or removing involvement from all placements. As noted in Part 1, however, the working committee believes that ICPC is duplicative of the federal regulatory requirements and is recommending that it be removed.

However, it is noted that once a child has arrived in the United States, he or she will be either a U.S. citizen or a permanent resident alien. Disruption or dissolution of the adoption does not result in a child being returned to the foreign country. All re-placements following disruption are therefore considered domestic placements, not intercountry adoptions. Therefore, the working group noted that the most appropriate way to handle such cases would be to follow the same procedures created to cover private domestic placements.

Dissolution of a completed adoption would involve a surrender of parental rights and a replacement of the child with another adoptive family. Some noted that these placements are just as likely to disrupt as pre-adoptive placements. Even though dissolution involves a termination of parental rights, it is still possible to disrupt a placement. In these cases, it generally falls to the adoptive parents to locate another family who wishes to adopt the child or to relinquish the child to state authorities. Although it was noted that ICPC would allow the state to assign responsibility to an

agency in guardianship cases, such provisions would not apply to this scenario. Thus, the removal of ICPC from the process does not affect the outcome of scenario 3 at all. As in other scenarios, the working group concluded that this situation should be handled in accordance with the procedures established by the committee on private/independent placements for domestic adoptions.

3. Review of other relevant issues

Recommendation: *The subcommittee acknowledged that the following issues were not in the purview of and interstate compact, but recommends that states review their regulations regarding the assignment of legal and financial responsibility for the care of the child to the adoption service provider placing the child; liability insurance; consumer protection measures, or contract requirements.*

During the discussion of the various international adoption scenarios, the working group noted several other relevant issues that needed to be addressed for the best interests of children. In each of these, it was acknowledged that ICPC may not be the appropriate forum for addressing these issues. Therefore, the group chose to recommend that States review their regulatory provisions in several key areas, with a view to amending statutes which may not adequately protect children.

It is noted that many of these issues are addressed in the Intercountry Adoption Act (Public Law 106-279) and the forthcoming regulations for the ratification of the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption*. However, the working group noted that the Hague does not currently apply to all children involved in intercountry adoptions. All children deserve to have the same protections whether they are being adopted from a country that is a signatory of the Hague or not. Therefore, States are encouraged to review their regulatory provisions to determine if additional protections for children may be needed at the state level in the following areas.

Legal and Financial Responsibility: The working group noted during the discussion of disruption and dissolution of an adoption that legal and financial responsibility for the child was a problematical issue in several ways.

For families who arrived in the United States with a full and final adoption in all jurisdictions, the parents bear full responsibility for the legal and financial ramifications of a dissolved adoption. This is true even when adoptive parents had their adoption finalized within hours of meeting a child. Some adoption service providers do assist parents wishing to dissolve an adoption to locate another family to adopt the child, but many do not.

In cases where the adoption may be final overseas, but not in the United States, some families find that adoption service providers are unwilling to provide disruption services or take responsibility for

a child based upon the fact that the adoption is considered final abroad.

Even in guardianship cases, if a child has been placed into the guardianship of the family (rather than the agency) it is possible that families who wish to disrupt a placement will be left without services if no agency is willing to accept responsibility for the child.

The Intercountry Adoption Act requires that accredited agencies provide disruption services for their clients in Hague Convention cases. In addition, some states have requirements that child placing agencies take responsibility for the children they placed. (Add Florida regulation).

Liability Insurance: The working committee is aware of no U.S. state which requires that adoption service providers carry liability insurance that covers child placement services.

Adoptive parents who did not receive full disclosure of a child's medical or psychological history prior to adoption have experienced difficulty in pursuing wrongful adoption suits or other legal recourse. Often this is because the family cannot find an attorney willing to bring a case to trial when there are no recoverable damages. The cost of the suit would be more expensive than damages recovered. Therefore, the family with a completed adoption may be faced with enormous medical costs and full legal and financial responsibility—even in cases involving negligence or lack of due diligence.

The Intercountry Adoption Act requires all adoption service providers who are accredited to perform Hague Convention adoptions to carry liability insurance. This provision does not apply to adoption service providers who are not accredited.

Consumer Protection Measures/Contract Requirements

In discussing liability and insurance issues, the Committee also discussed the general lack of consumer protection measures afforded to adoptive parents in intercountry adoptions. Some of the issues include, *inter alia*:

- ▶ Failure to disclose all applicable costs/fees
- ▶ Refusal to identify contracted agents in the foreign country;
- ▶ Use of blanket waivers of liability (as opposed to informed consent waivers) in required contracts;
- ▶ Failure to have or disclose refund policies;
- ▶ Lack of basic contract requirements regarding notification of all involved parties, time period to revoke contract, etc.

The Intercountry Adoption Act again requires these types of consumer protection mechanisms, but only in regard to accredited adoption service providers performing Hague Convention adoptions.

Conclusion: While the committee concedes that many of the above mentioned issues fall outside the scope of ICPC, they are all issues that directly impact the health and well-being of children

being adopted internationally. Therefore, the working group recommends that States be advised to review their procedures to ensure that current statutes are adequate to fully protect children, and to consider whether amendments to conform to the Intercountry Adoption Act would be advisable.