



ADOPTION

Prepared by: 17 TRW/JA

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The information displayed in this handout is meant for the sole use of Active duty service members, retirees, their families and other personnel eligible for legal assistance from the Goodfellow AFB Legal Office. The information is general in nature and presented to assist those eligible persons prepare for a legal assistance appointment with a professional in the legal office. Rights and responsibilities vary widely according to the particular set of circumstances in each case. Laws can vary across states, services, and civilian jurisdictions and laws are changed from time to time. Do not rely upon the general restatements of background information presented here without discussing your specific situation with a legal professional.

ADOPTION FACT SHEET

1. What is adoption?

Adoption bestows on the adoptive parent(s) all the rights and responsibilities of a legal parent and gives the child being adopted all the social, emotional, and legal rights and responsibilities of a family member. Sometimes, court language will include the words “as if born to” to describe the new parent-child relationship. The word “child” refers to anyone under eighteen years of age. The legal result is that the child ceases to be the legal obligation of the natural parents and becomes the responsibility of the adoptive parents. Adoption law is largely governed by state law. All 50 states have statutes that govern adoption.

2. Who can adopt?

Adoptive parents may be married or single, childless or already parenting other children. Having a disability does not automatically disqualify you from adopting a child; rather, agencies will want to ensure that you can care for a child and meet his or her needs throughout his or her childhood. Divorce or a history of marital or personal counseling does not automatically eliminate you as a candidate. For many adoption agencies in the United States, however, agency criteria for applicants are restrictive in areas such as age, years married, and stability of employment income.

3. Q. How are children adopted?

Children may be placed for adoption in a variety of ways. These are as follows:

- Agency Placement: This is the procedure for adoption used by licensed adoption agencies.
- Direct Placement or Independent Adoption: This is one made by the natural parents directly into an unrelated adoptive home without the assistance of an agency.
- Step-Parent Adoption: This is one in which the new spouse of a parent agrees to adopt the child of that parent born before the marriage of the spouses.

All of these procedures require court approval and a home study. There is no one form of adoption that is “right,” since different procedures may be better for one couple or another.

4. My spouse and I want to adopt a child – what’s the difference between agency placement and direct (non-agency) placement?

It might seem at first much easier to adopt a child directly from the mother than to apply to a licensed adoption agency. Many prospective parents are honestly concerned about fees, waiting lists, background checks, and home studies. As a practical matter, however, there may be many more problems (although these can be overcome) with direct placements than with agency adoptions. First, the adoptive parents have no guarantee that the birth mother will consent to adoption, since this consent cannot be given until the child is born. In some states, for example, the hospital will not release an infant to someone other than a natural parent without a valid approval by the county or state Department of

Social Services (DSS), or its equivalent. This approval must be done well in advance of the baby's birth. In some states, it is a criminal misdemeanor to separate a child under six (6) months of age from his or her natural parents without such approval of county or state authorities. In many states, it is also a crime for the new set of parents (or anyone else) to pay for expenses associated with the direct placement of the child. This includes legal fees, medical expenses, home care arrangements, and any other costs. Additionally, direct placement will require considerable effort on the part of the prospective parents regarding the natural parents of the child (both in finding them and obtaining valid and legal consents to the adoption). Couples who wish to adopt should ask themselves:

- What do we know about the child's background, medical history, and birth parents?
- How do we know that the legal procedures have been followed, that the proper consent forms have been obtained from the birth parents, and that the child is legally available for adoption?
- How can we guarantee privacy and security for ourselves and for the child after the adoption and avoid interference by one or both of the birth parents?
- How can we and the child be best protected for the future?

When an agency placement is done, every effort is made to make sure that the child is placed in a suitable adoptive home with parents well matched to the child's background, capabilities, and medical history. The adoptive parents will be told enough about the child to inform them of these factors but not enough to identify the birth parents. The child is placed with a couple where there is no danger of recognition by the natural parents or their friends or relatives. The adoptive parents are assured that the child can legally be adopted. Their home environment and backgrounds are checked and studied thoroughly to make sure that they are ready and able to adopt the child and provide adequately for him or her. An agency placement means that every available protection has been given to the natural parents, the child, and the adoptive parents under state law.

5. What are the legal steps to be taken in adopting a child?

In adopting a child, it is necessary to file certain papers in court and, in most cases, to retain a private attorney for assistance. The procedures will vary in individual cases, depending on whether the proposed adoption is one based on abandonment, consent by the other parent, or placement by an agency. If you have a question about whether you will need a private attorney, you should consult a legal assistance attorney. In general, procedures for adoption are handled by a local court in the county where the adoption is to take place. There is generally a filing fee required with the petition. The basic steps for adoption are as follows:

- **Filing of the Petition for Adoption:** It is signed by the adoptive parents and is filed in the county where the child is living, the county in which the adoption agency is located, or the county in which the adoptive parents live.
- **Consent to Adoption:** If the adoption is by consent (either a step-parent adoption or an agency placement), the next step is the filing of the consent to the child's adoption by the natural parent or parents who would give such a consent. In some states, a child over a certain age such as twelve, for example, must also consent to his or her own adoption.

- **Order of Reference and Home Study:** The order of reference involves referring the case to the adoption agency, or in the case of a step-parent adoption by consent to the county DSS, or its equivalent, for the completion and filing of a home study of the adoptive parent or parents, their background and home situation, and how the child and parents are adjusting to each other. Reports of recent medical examinations of the child and parents, as well as any other pertinent information, are also included in the home study.
- **Interlocutory Decree:** Once the home study is completed, an interlocutory decree may be issued. This is a temporary court order giving the adoptive parents custody of the child until the final order is issued. The interlocutory decree is not a final order. It will usually take up to a year between the interlocutory decree and the final decree of adoption, but this varies from state to state.
- **Final Order of Adoption:** The final step is the filing of the final order of adoption. This makes the child legally one of the family, just as if he or she had been born to the adoptive parents. The child is able to inherit real and personal property just as a natural child would. After the final decree, the birth certificate of the child is amended and the new certificate will show the adoptive parents as the birth parents of the child.

6. If I give my consent to have my child adopted, can I change my mind later?

The laws of each state permit a natural parent to withdraw his or her consent to the adoption proceedings only in very limited circumstances. Basically, the consent can be withdrawn only within certain time limits, such as within three months of giving consent. Again, the rules vary from state to state.

7. If my child is adopted, do I have any legal rights or obligations toward the child?

No. Once the child has been adopted, the natural parents cease to have any legal rights or obligations toward the child. If a natural parent owed a child support obligation, that obligation would stop once the child was adopted.

8. Will a new birth certificate be issued?

In most U.S. jurisdictions, at the time the adoption is finalized, the child's name is legally changed and the court orders the issuance of a new, amended birth certificate for the adopted child. The amended birth certificate:

- Replaces the name(s) of the biological parent(s) with the names of the adoptive parent(s), and
- Replaces the child's birth name with his/her new name.

The original birth certificate and other documents relating to the adoption are sealed and are generally not available to parties to the adoption.

MILITARY ADOPTION BENEFITS

DoD Adoption Reimbursement Program

If you are on active duty in the military, you are eligible for reimbursement of expenses up to \$2,000 for the adoption of a single child and up to \$5,000 per family per year. There is one caveat: the adoption must have been arranged through a source that is authorized by a state to provide adoption placements if the adoption is supervised by a court under state law or local law. This benefit is not doubled if both parents are in the military. Expenses that can be reimbursed include agency fees, legal fees, placement fees, and medical expenses. (See attached DFAS information).

Medical Care

Military parents can exercise an option to have children that are placed with them covered by their military medical program even before the adoption is finalized. The child must be enrolled into DEERS in order to be eligible. For more information, visit the patient affairs personnel at a military medical treatment facility or access the TRICARE website at TRICARE Life Events - Adopting. To help military families who adopt a special needs child and face the extra challenges that come with caring for special needs children, TRICARE offers additional programs to those who are eligible. In 2005, TRICARE introduced the Extended Care Health Option (ECHO) which benefits include:

- Training
- Rehabilitation
- Special education
- Assistive technology devices
- Institutional care in private nonprofit, public and state facilities (may include transport to and from)
- Home health care
- Respite care for the primary caregiver
- Incontinence supplies (diapers)

There are no enrollment fees, but you must pay part of the monthly expenses for authorized ECHO benefits. The total TRICARE cost share for all ECHO benefits combined is \$36,000 per fiscal year. For further details on the TRICARE ECHO program, go to the TRICARE website at TRICARE ECHO.

The Exceptional Family Member Program

The Exceptional Family Member Program within the military provides many services including assisting families who need to be stationed in areas that provide for specific medical or educational services that might not be available in remote locations. More information is provided on the Military OneSource website at Military OneSource EFMP.

Deployment Deferral or Extension of Assignment

Deployment Deferral or Extension of Assignment are options military families may request if they need to remain in one state to finalize an adoption. According to DoDI 1341.9, commanders are encouraged to approve requests for ordinary leave once a child is placed in the home of a service member. The instruction states that single members or one member of a military couple shall receive a four-month assignment and deployment deferral immediately following the date a child is placed.

Tax Benefits for Adoption

A tax benefit of up to \$15,950 (for the 2023 tax year) is available for all adoptive families (certain income restrictions apply) for qualified adoption expenses. Qualified adoption expenses are reasonable and necessary expenses directly related to the legal adoption of the child who is under 18 years of age (i.e., adoption fees, court costs, attorney fees, and travel expenses). While military families do not qualify for services under the Family Medical Leave Act, they do qualify for this tax benefit. Many states provide reimbursement of a certain amount of non-recurring adoption expenses. Be sure to check with your state tax office to learn more about it, and contact your local IRS office or a tax advisor if you need more information or assistance with preparing your tax return.

NOTE: This guide is intended for general informational purposes only. It is advisable to periodically verify this information and consult with a legal professional for the most current and applicable advice. Due to the limited capacity of JAG attorneys, we can only provide basic guidance on adoption matters. We strongly recommend seeking out an attorney who specializes in family law for more comprehensive assistance regarding adoption. If you have any questions or need to schedule an appointment with a legal assistance attorney, please call the Legal Office at 325-654-3203

References:

Public Law 102-190, Sec 651 & 652 (10 U.S.C Chapter 53, Section 1052)

14 U.S.C. 514

DoDI 1341.9, Dated November 3, 2007

DFAS Instruction 1341.1, Volume 7C, Chapter 4, June 1998:

V.T.C.A., Family Code § 162

Websites:

Military.com: www.military.com

Military.com provides information on military benefits, including adoption. The website is current and relevant.

NMFA: www.nmfa.org

The National Military Family Association (NMFA) provides resources and support for military families, including adoption information. The website is current and relevant.

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