

agencies and persons that do not become accredited, temporarily accredited, or approved, and instead act as a supervised provider, are not subject to all of the standards in subpart F. They are, however, subject to the standards contained in § 96.45 (supervised providers in the United States) or § 96.46 (supervised providers in other Convention countries) of subpart F. Third, agencies and persons that do not become accredited, temporarily accredited, or approved cannot operate as the primary provider in a Convention case.

(c) **Primary Providers.** These regulations establish as a principle of accreditation and approval that an accredited agency, temporarily accredited agency, or an approved person must identify itself as the "primary provider" in each Convention case. The primary provider must be an accredited agency, temporarily accredited agency, or approved person. It cannot be a supervised provider. If there is only one accredited agency, temporarily accredited agency, or approved person among the agencies and persons providing the six adoption services (as defined), then that one inherently must act as the primary provider. Where more than one accredited agency, temporarily accredited agency, or approved person is providing services in the same Convention case, and therefore more than one agency or person is eligible to act as the primary provider, the agency or person performing the tasks listed in § 96.14(a)(1)–(4) must be designated as the primary provider. Whether the accredited or temporarily accredited agency or the approved person is providing all of the adoption services itself or is using supervised providers or other providers to provide the six adoption services, the regulations also establish, as a principle of accreditation and approval, that all six of the services listed in the definition of adoption services must be provided in each Convention adoption case.

The primary provider under the accreditation and approval standards has two principal responsibilities. First, the primary provider is responsible for ensuring that all six of the adoption services listed in the definition of "adoption services" are provided in each Convention case. Second, the primary provider is responsible for supervising non-accredited agencies and non-approved persons that are providing adoption services (as defined) in the case. The requirements and parameters for providing supervision can be found in §§ 96.45 and 96.46.

The primary provider principle is appropriate and necessary for a number of reasons. Although the IAA is clear that agencies and persons providing adoption services in a Convention case must either be accredited, temporarily accredited, or approved or supervised, it is silent on how supervision will be provided and how providers in the same Convention case must coordinate adoption service delivery. These regulations provide that framework through the creation of the primary provider requirement incorporated into the accreditation and approval standards as appropriate. Also, to provide clarity in response to the numerous inquiries about the requirement during the preliminary public input phase, the primary provider principle appears in the regulations as a freestanding provision in § 96.14, which is cross-referenced to the definition of primary provider in § 96.2(cc).

The Department is aware that this principle both reflects and changes current practice. This scheme allows agencies and persons, especially small agencies and persons, to continue to form the network of providers needed to complete each individual intercountry adoption. The Department does not want to interfere unnecessarily with how a network is formed to provide services in each particular adoption case. The Department understands that agencies with an adoption program in one country must be able to connect with potentially 50+ other agencies or persons because the prospective adoptive parent(s) to be matched with a child could be in any one of the 50 States or in other U.S. jurisdictions. Conversely, prospective adoptive parent(s) who seek to adopt a particular child identified as in need of an adoptive placement must be able to connect with an agency or person (which may not be located in the State where the prospective adoptive parent(s) resides) that has an adoption program in the country of origin from which they wish to adopt a child. In deference to the historically important role the formation of networks and the use of small agencies and persons have played in providing services that match children from many different countries of origin with prospective adoptive parent(s) in diverse and widely dispersed geographical areas, the Department has crafted regulations that allow such relationships among agencies or persons to continue. The Department's goal is to mirror current practices and to provide regulatory flexibility so that the regulations do not

negatively affect small agencies and persons and other providers.

The regulations through the accreditation and approval standards do require, however, an accredited agency, temporarily accredited agency, or approved person in every case be identified as the primary provider and formally assume responsibility for supervision of other providers in the case, both in the United States and overseas, that are not accredited or approved. Another important provision, in §§ 96.45(c) and 96.46(c), is that a primary provider must assume legal responsibility for the actions of supervised providers, both in the United States and overseas.

As stated, the Department is not seeking to alter current practice unnecessarily, particularly where current practice does not give rise to the types of abuses that the Convention and the IAA seek to curtail. In this case, however, while the concept of identifying a primary provider is not an established practice and is not provided for in the IAA, the Department has concluded that it is necessary to have an organizing principle to ensure that one agency or person has ultimate responsibility for proper and effective service provision. Close coordination is particularly important given the Convention's requirements that key tasks and determinations be undertaken and made before the adoption proceeds to ensure that the adoption is in the best interests of the individual child and in compliance with U.S. obligations to other Convention countries. The Department also believes that the primary provider requirement will improve practice without unduly changing the adoption community's current structure for providing adoption services. The Department also notes that, consistent with the IAA, the regulations provide for regulatory flexibility and enable all agencies or persons, including those that are small, to choose to become accredited, temporarily accredited, or approved (and act as a primary provider in a particular case where necessary) or to be supervised providers.

When acting as the primary provider and using supervised providers, the accredited agency, temporarily accredited agency, or approved person must comply with § 96.44 (Acting as Primary Provider), § 96.45 (Using Supervised Providers in the United States), and § 96.46 (Using Supervised Providers in Other Convention Countries) as well as all of the other standards in subpart F.

The primary provider may work with a variety of entities. In the United