

services. The concerns were especially acute about service providers in other countries.

The Department shares these concerns but at the same time recognizes that the ability to work with providers in other countries to obtain services that must be rendered abroad is a critical and essential part of intercountry adoption practice. Moreover, many such providers do provide sound and ethical services. The Department does not wish to render it overly difficult to work with these providers, or unnecessarily to penalize those providers that are not the object of these complaints. Furthermore, the Department recognizes that there are limits to its ability to monitor and control the practice of entities abroad not governed by our laws.

To address these issues, the regulations set forth specific requirements governing the use of supervised providers in Convention cases. The primary provider may work with one or more other entities that will act under its supervision and responsibility; however, such work is conditioned on compliance with the requirements in § 96.45 (Using Supervised Providers in the United States) and § 96.46 (Using Supervised Providers in Other Convention Countries). This Preamble does not review all of the requirements contained in these sections, but generally the primary provider must: (1) Screen supervised providers to ensure that they have a general understanding of the Convention and do not engage in practices inconsistent with its principles and requirements; (2) before entering into an agreement for the provision of adoption services, obtain information about the supervised provider's history of practice and suitability to provide services consonant with the Convention; and (3) enter into a written agreement that binds the supervised provider to adhere to a range of specified performance standards.

The requirements on supervised providers are bifurcated into two sections—§ 96.45 and § 96.46—so that the standards for foreign supervised providers can be tailored to address specific concerns. This bifurcation is useful for three reasons. First, some of the requirements for domestic supervised providers simply are not apposite for service providers operating in other countries and had to be modified accordingly. Second, the requirements for foreign supervised providers include specific provisions for the types of services those entities are most likely to provide (for example, in cases of immigrating children, the provision of medical records). Third,

and most important, the requirements for foreign supervised providers reflect the heightened concern expressed by some members of the adoption community about problematic practices by foreign providers.

The primary provider is responsible for ensuring that the supervised providers with whom it chooses to work comply with these requirements. Failure to do so may be grounds for adverse action against the primary provider and may jeopardize its accreditation or approval status.

Sections 96.47 and 96.53: Preparation of Home Studies in Incoming Cases; Background Studies on the Child and Consents in Outgoing Cases: These sections address the home study and child background study requirements. The Department wishes to highlight that all U.S. home studies and child background studies that are not prepared in the first instance by an accredited agency or temporarily accredited agency must be reviewed and approved by an accredited agency or temporarily accredited agency. It is not sufficient for the home study or child background study to be reviewed and approved by an approved person. Home studies or child background studies done by an exempted provider or by an approved person must be reviewed and approved by an accredited agency or temporarily accredited agency.

The reason that it is not sufficient for an approved person to approve the home study or child background study is that Article 22(5) of the Convention requires the home study or child background study to be prepared in every case by or under the responsibility of the Central Authority, public authorities, or by an accredited body. The Department recognizes that the IAA only requires that a home study or child background study prepared by an exempted provider be approved by an accredited agency or temporarily accredited agency. However, the Convention requires that in every case the preparation of the home study or child background study be performed or supervised by an accredited agency. Therefore, the regulations require all home studies or child background studies to be prepared or approved by an accredited agency or temporarily accredited agency.

Section 96.49: Provision of Medical and Social Information in Incoming Cases: The Department recognizes that the provision of accurate medical records on the child is one of the most important issues facing birth parents, prospective adoptive parent(s) and adoptees and that current practice has often been unsatisfactory. The

Department in this standard tried to balance the need for more detailed and accurate medical information on a particular child against the difficulties inherent in obtaining such information in many foreign countries.

The Department considered the following issues: First, the Department is aware that in many, if not most, Convention countries, given current practices and the limited resources of the public authorities or competent authorities, it is extremely difficult for such authorities to obtain all information that may exist on a child prior to an adoption. Second, some members of the public pointed out that, under Article 16 of the Convention, responsibility for preparing the child background study, which must include the medical history of the child, including any special needs of the child, is with the Central Authority of the child's country of origin (or its accredited bodies), rather than with the receiving country. Third, the Department is aware that, because the health care provided to many children in public care has historically been inadequate, medical care may not have been provided to a particular child, or care may have been provided but the medical records simply may not have been created or may not provide the same types of information available in the United States. Fourth, the Department is concerned that any impractical standards in this area will negatively affect the adoption of children with medical problems or special needs because agencies and persons will be less likely to assume the risks of placing such children absent extensive information, which typically is difficult to obtain. On the other hand, the Department received input that agencies and persons: (1) Do not aggressively push the public authorities or competent authorities in the child's country of origin to produce what records they do have; or (2) withhold medical information that they do obtain.

Resolving all these issues in a way that would meet the concerns of the diverse members of the adoption community was not possible. The Department has thus written several compromises into the regulations. The regulations require that all available medical information be forwarded in a timely fashion. In particular, agencies and persons must make all reasonable efforts to provide all of the listed information and, if such information cannot be provided, document all efforts made to obtain the information and explain why it is not obtainable. The standards also require the provision of contact information for the physician in