

## Child and Family Services Policy Manual: Adoption Legal Risk Pre-Adoptive Placement

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### Definition

**Legal risk pre-adoptive placement** is the placement of a foster child, for whom the permanency plan is adoption, with people who have been approved as an adoptive resource, pending the child becoming legally free for adoption

**NOTE: Legal risk pre-adoptive placement should not be confused with the placement of a child with a concurrent planning family.**

A concurrent planning family is a family approved both as a foster family and an adoptive family. The foster family must be willing to work with the Department, the child's birth family, and the child's extended family members toward the goal of reunification. If a permanent placement is not established through reunification with the child's birth family or extended family, the concurrent family will be given priority for adoption if they are determined to meet the best interests criteria for the child. (See Section 603-2, Identification and Selection of Family.)

### Policy

Legal risk pre-adoptive placement is appropriate in cases where the Department, at a minimum, has filed a petition for permanent custody of the child. By using an approved adoptive family willing to accept a legal risk, the child may be placed with an approved adoptive family in a timelier manner, which meets the child's developmental and emotional needs.

Legal risk placement is necessary because the child's legal availability for adoption cannot be guaranteed to the prospective adoptive family at the time of placement. This may be because:

- a petition has been filed, but the birth parents' rights have not yet been terminated; or
- a pending legal action, such as an appeal, is contesting the validity of a court order terminating parental rights.

### Criteria for Placement

Legal risk pre-adoptive placements should be made only when:

- the child's best interests are served;
- adoption is clearly the goal;

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- a determination has been made by the county attorney or the agency's legal counsel that termination of parental rights is both likely and able to be obtained in a reasonable period of time;
- the prospective adoptive parent(s) have given written consent to the placement indicating that they have been fully informed of the risks involved (i.e., if the child is not freed for adoption, the child may have to return to the birth parents). See the Legal Risk Pre-Adoptive Placement Agreement on page 5; and
- the family is an approved adoptive family and is licensed for foster care.

Because it will need to be adjusted to meet the needs of each placement, the Legal Risk Pre-Adoptive Placement Agreement is not a pre-printed form or a DocGen on CAPS. It is the responsibility of the child's worker to complete the legal risk agreement to meet the specific situation.

The child's child protection specialist and the family resource specialist serving the adoptive family will coordinate a placement process that best meets the needs of the child. The process includes:

1. providing the prospective adoptive parent(s) with complete and accurate information, including:
  - a. completed DPHHS-CFS-107, Birth Family Social and Medical History;
  - b. complete medical records, including immunizations;
  - c. psychological evaluations on any family member, if contained in the Department's records;
  - d. school records;
  - e. child's daily routine;
  - f. information on previous placements, including type and length of placements;

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- g. child's eligibility for subsidized adoption; and
  - h. the child's Life Story Book.
2. clarifying if and how information about the child and/or the child's birth parents will be updated;
  3. arranging for pre-placement visits; and
  4. providing adoptive parent(s) a copy of placement agreements for their review prior to placement of the child.

<b>Licensing</b>	The approved adoptive home that receives a child in a legal risk placement is issued a foster home license based upon an approved adoptive pre-placement evaluation. The pre-placement evaluation is placed in the licensing file in lieu of a foster home study.
<b>Restrictions</b>	The youth foster home license issued is restricted to the child(ren) in the home for whom there is a signed <u>Legal Risk Pre-Adoptive Placement Agreement</u> .
<b>Requirements</b>	Foster Care Review Committee (FCRC) requirements must be met for all children in foster care including those children in legal risk placements. The Department FCRC policy must be followed for all reviews. (See Sections 409-1, Foster Care Review Committees.)
<b>Child Protection Specialist (or FRS After Transfer) Responsibility</b>	The FCRC forms must be placed in the child's case record. The reviews are scheduled by the child protection specialist supervisor or his or her designee. The required review form is completed by the placing worker. (See Section 402-6, Request for Courtesy Supervision and Case Transfer.)
<b>CAPS</b>	Placements must be entered on PLAD even if no payment is being made. Update the permanency goal to reflect adoption. An application for Medicaid should be made even if no foster care payment is being made. This will determine if the child is eligible under any other available Medicaid program.
<b>Procedure for Subsequent Adoption</b>	Once the child is legally free for adoption, a DPHHS-CFS-030, <u>Agreement on Adoptive Placement</u> is completed and signed by the adoptive parent(s), child's worker, the worker supervising the adoptive placement, and, when appropriate, the child. At

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this point, the placement becomes an adoptive placement rather than a foster care placement. Services continue to be provided by the family resource specialist until the adoption is finalized.

**Parental Rights  
Not Terminated**

If the Department is not successful in obtaining permanent legal custody of the child with the right to consent to adoption, the child's worker shall determine a new plan for the child. If the child is returned to the birth parents, the worker shall assure a transition that will ease the child into the home and shall work with the family resource specialist to assist the legal risk adoptive parent(s) in adjusting to the transition.

**Private Agencies**

In a legal risk pre-adoptive placement through a private agency, the approved adoptive family must meet the Department's foster care licensing standards and be licensed by the Department prior to the placement of the child in the home. At the discretion of the Regional Administrator, payments negotiated for the Adoption Subsidy may be made on behalf of the child at the time of pre-adoptive placement until the adoption is finalized.

**Montana Department of Public Health and Human Services  
Legal Risk Pre-Adoptive Placement Agreement**

I/We agree to accept \_\_\_\_\_ on a Legal Risk Pre-Adoptive basis from the Department of Public Health and Human Services.

I/We understand that the Department of Public Health and Human Services does not have the legal authority to consent to the adoption of this child because:

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I/We agree to accept the above named child on a foster care basis until such time as the child becomes available for adoption, or, in the event the Department does not obtain the right to consent to adoption, until such other plans are made for the child. I/We understand that the child may have to be removed from my/our home and placed elsewhere if the Department does not obtain permanent legal custody with the right to consent to adoption.

I/We agree to the following terms and conditions regarding the provision of foster care for the above-named child:

1. to abide by the terms of the DPHHS-CFS-LIC-020, Foster Parent Licensing and Relicensing Agreement, in providing care to the child;
2. to continue any therapy or counseling that the child may be receiving and to make arrangement for any further treatment the Department deems necessary;
3. to return physical custody of the child to the Department, if requested, in the event that the Department does not obtain permanent legal custody with the right to consent to adoption; and
4. to \_\_\_\_\_  
\_\_\_\_\_

The Department of Public Health and Human Services agrees as follows:

1. to seek permanent legal custody of the child including the right to consent to adoption;
2. to consent to the adoption of \_\_\_\_\_ if the Department receives permanent legal custody with the right to consent to adoption, providing that the family completes a successful period of post-placement supervision;
3. to comply with the Department's responsibilities;
4. to provide the family with the current psychological information regarding the child, and the completed form DPHHS-CFS-107, Birth Family Social and Medical History;

5. to provide Montana Medicaid coverage while the child is in foster care status;  
and

6. to \_\_\_\_\_  
\_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

Department of Public Health and Human Services

Adoptive Parent(s)

\_\_\_\_\_  
CPS Specialist

\_\_\_\_\_

\_\_\_\_\_  
Supervisor

\_\_\_\_\_

\_\_\_\_\_  
Family Resource Specialist