

**OVERCOMING INTERSTATE ADOPTION ISSUES**  
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**A. WHAT IS THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN?**

The Interstate Compact on the Placement of Children (“ICPC”) is a federal law which establishes uniform legal and administrative procedures governing the interstate placement of children. The ICPC is premised on the belief that children requiring out-of-state placement will receive the same protections and services that would be provided if they remained in their home states, and further that all legal requirements are observed. In furtherance of this goal, the ICPC gives the sending state the opportunity to conduct home studies and evaluate the proposed placement. It allows the prospective receiving state the opportunity to determine that the placement is in the child’s best interests and it guarantees both legal and financial protection.

All fifty (50) states, as well as the District of Columbia and the U.S. Virgin Islands are members of the Compact. Each state has codified the ICPC into state law and has a designated Compact Administrator which oversees the process of interstate placements. In Massachusetts, the ICPC is administered by the Department of Children and Families (“DCF”) and regulations governing the ICPC can be found at 110 CMR 7.500 through 7.523, a copy of which is attached.

For the purposes of an adoption, it is illegal to move a child across state lines without meeting the requirements of the ICPC. If a child is born in one state, commonly known as the "sending state" and the adoptive family lives in another state, called the "receiving state", the adoption

placement must be approved by the ICPC. Note, however, that the ICPC does not apply to the sending or bringing a child into a receiving state by his or her parents, step-parent, grandparent, adult brother or sister, adult aunt or uncle, or guardian and leaving the child with any such relative or non-agency guardian in the receiving state.

Responsibilities of sending and receiving States delineated in ICPC include completion of home studies for prospective foster and adoptive parents, supervision of children in interstate placements, legal jurisdiction of cases (which affects both courts and child welfare agencies), financial responsibilities, and reporting requirements. ICPC also outlines procedures for States to follow regarding communication among caseworkers and ICPC administrators in two States, often involving numerous staff in various agencies.

A child may not be taken from one state to another until both the sending state and the receiving states' ICPC offices have given approval for the placement of the child. First, the sending state must notify the receiving state of its intention to place a child across state lines. This requires the sending state to complete certain forms, including the Interstate Compact Placement Request (ICPC 100A) and extensive documentation. The documentation submitted to the ICPC for approval includes the adoptive parents' home study, the child's birth information and other health information, biological information on the birth parents, and relinquishment or termination documentation from the birth parents. Documentation for the child and the adopting parents will be forwarded to the ICPC office in the sending state which will forward the documents to the ICPC office in the receiving state. The ICPC offices review the documentation to verify

compliance with their state laws and regulations and make a determination to either approve or deny the placement.

If approved, procedures are initiated to place the child in the receiving state. On average, the processing time from 100A submission to final approval is approximately six days; however, this timeline may vary significantly depending on the completeness of the application. The ICPC process can be complicated and is fact driven. It is not unheard of for an adoptive couple to live in a hotel for several weeks with a new infant pending ICPC approval before returning to their home state. The consequences for failing to comply with the ICPC can be quite severe, including returning the child to the sending state and/or setting aside an adoption. For these reasons, it is highly recommended that adoptive families hire an adoption professional such as adoption attorney or agency to assist with the ICPC process. A proactive attorney or agency can ensure that all necessary requirements are met in a timely manner and avoid the traps of the unwary.

After the ICPC approval, the next step in the process is the adoption finalization. In Massachusetts the child is required to be placed with an adoptive family for six months prior to finalization. Prior to finalization the sending state maintains responsibility for and jurisdiction over the child. Once the child is legally adopted such responsibility is terminated.

The ICPC is currently under revision to reflect updated laws and technology and to better serve its original intent. A new version has been presented to states for ratification and will become law once 35 states have adopted it.

## **B. DEALING WITH CONFLICTS BETWEEN STATE LAWS**

When ICPC was developed, each participating state joined by passing the same set of laws supporting and specifying the administration of the compact in that state. However, each state had already passed its own laws on child placement and adoption, and these laws have continued to evolve independent of ICPC. This often create conflicts between states involved in an interstate placement as each has a different understanding of the steps required to approve a family as a foster or adoptive family. Two sets of state laws and two judges in two states, each interpreting their own state's laws (including ICPC laws), lead to inconsistencies and occasional conflicts between sending and receiving states. Because there are no Supreme Court decisions regarding ICPC application, there is no judicial resolution regarding differences in state laws and interpretations of ICPC provisions among member States, further complicating the inter-jurisdictional placement process.

Several problems also have arisen with implementation of the ICPC, including the absence of consistent, clear standards for home studies to assess prospective adoptive families; the lack of enforceable time frames for initiating and conducting evaluations of potential adoptive families; processes for mediating differences between states; and the financial responsibilities of sending and receiving States, such as medical coverage, support services, case supervision, home studies, and special educational costs.

## **C. NAVIGATING MULTISTATE ADOPTION PROCEDURES**

In an interstate adoption, the birth mother and child reside in a different state than the adoptive family, and the child is taken from one state to another state for the purposes of an adoption

placement. There are several variables at play because not only must the ICPC requirements be met, but the legal requirements for each state must also be met. One must navigate multistate adoption procedures with experience, patience, and many times a sense of humor, to ensure a successful interstate placement.

First, unless there is no process to terminate the rights of the birth parents in the sending state, the ICPC *prefers*, and with some states, insists, that the parental rights be terminated in the sending state. An example of when no procedure exists to terminate parental rights is when some states terminate only in conjunction with the finalization of the adoption. In such instances, the court may not have jurisdiction to terminate the rights, alone. In such cases, Massachusetts may be the state that finalizes. The process involves the birth parent(s) waiving their respective rights under the sending state and submitting to the jurisdiction of Massachusetts for the purposes of terminating their rights in accordance with Massachusetts law. The birth parents must have independent representation to advise them of their rights which they are waiving and be fully informed of the implications of Massachusetts law. The birth parents must sign a jurisdictional statement, acknowledging their full understanding of the implications of the waiver; the voluntariness of their waiver, and that they have been advised by independent counsel.

Part and parcel to the voluntary submission to the jurisdiction of the laws of Massachusetts is the assurance that the birth parents have received all relevant services, as required under Massachusetts law, which may be different from their home state. An excellent example is the allowance of certain birth mother expenses. Massachusetts has strict requirements regarding the payment of expenses.

On the other hand, if, there is no waiver, and the rights are being terminated in accordance with the sending state, the key factor, is complying with the services of the sending state. The sending state may not allow for any birth parent expenses to be paid, or only certain ones, or have no regulations at all.

Massachusetts ICPC wants to ensure that the parental rights have either been fully terminated, or steps have been taken to do so. Meeting that requirement may mean a legal letter of opinion from the attorney of the sending state, and a docket number and copy of the petition, should surrenders or consents not have been signed. In anticipating a case where there may be an unusual circumstance that may require more than the standard ICPC checklist, good practice would be to call the Massachusetts ICPC office to ensure preparation of any further documentation.

Another important factor is the timing of the signing of the surrender, or consent and its consequences. Massachusetts requires at least 4 calendar days pass after the child is born before the surrender may be signed. Thereafter, there is no revocation period. Other states have other time requirements, and many may allow for a revocation for a certain period of times. Some states require no standard to revoke the surrender, while others do.

In all circumstances, one should not “avoid” the ICPC. Consequences may include penalties, fines, loss of the agency’s license, and in some circumstances, the return of the child, and jeopardizing the finalization of the adoption. Above all else, do not cut corners when handling an ICPC case. If the adoption starts to unravel, having a case properly approved by the ICPC can only help.

# Appendix

## 110 CMR: DEPARTMENT OF CHILDREN AND FAMILIES

### 7.500: Introduction to Interstate Placement Services

110 CMR 7.500 through 7.523 set forth the responsibilities of all persons and agencies involved in the placement of children across state lines and across national borders, consistent with Massachusetts law, including M.G.L. c. 119, Appendix §§ 2 - 1 et seq. (the Interstate Compact on the Placement of Children, hereinafter called "the Compact"); M.G.L. c. 119, § 36; M.G.L. c. 18B; M.G.L. c. 28A; and M.G.L. c. 210.

### 7.501: Interstate Placement Definitions

As used in 110 CMR 7.500 through 7.523 only the following terms shall have the following meanings:

Appropriate Authorities as used in M.G.L. c. 119, Appendix §§ 2 - 1 Article I(b) and Article Va, and "appropriate public authority" as used in Article III., mean the Compact Administrator for Massachusetts when the child is to be placed in Massachusetts.

Appropriate Officer or Agency as used in M.G.L. c. 119, Appendix, §§ 2 - 1 Article III(c) and §§ 2 through 6, means the Compact Administrator for Massachusetts when the child is to be placed from Massachusetts to another state.

Hospital means an institution for the acutely ill which discharges its patients when they are no longer acutely ill, which does not provide or hold itself out as providing child care in substitution for parental care or foster care, and in which a child is placed for the primary purpose of treating an acute medical problem. Outpatient care does not fall within this definition.

Institution means a residential setting where children are cared for on a 24-hour-a-day basis.

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Institution Caring for the Mentally Ill or Mentally Defective means an institution which provides medical care and treatment, psychiatric care and treatment, corrective, and therapeutic or rehabilitative treatment, for mentally ill or mentally defective or retarded persons. Such an institution is not altered in its character as an institution for the mentally ill or mentally defective merely because it provides child care services to these patients as part of a comprehensive regime of treatment. Outpatient care does not fall within 110 CMR 7.501: Institution Caring for the Mentally Ill or Mentally Defective.

Institution Primarily Educational in Character means an institution which operates one or more programs that can be offered in satisfaction of compulsory school attendance laws, in which the primary purpose of accepting children is to meet their educational needs, and which:

- (a) does not accept responsibility for children during the entire year; and
- (b) does not provide or hold itself out as providing child care constituting foster care or similar nurture sufficient to substitute for parental supervision and control; and
- (c) does not provide any other services to children, except for those customarily regarded as extra-curricular or co-curricular school activities, pupil support services, and those services necessary to make it possible for the children to be maintained on a residential basis in the aforementioned school program or programs.

Placement means the arrangement for the care of a child in a family or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective or epileptic or any institution primarily educational in character, or any hospital or other medical facility.

Proper Authorities as used in M.G.L. c. 119, Appendix § 2 - 1 Article I(c) means the Compact Administrator for Massachusetts when the child is to be placed from Massachusetts to another state.

Receiving Agency means any state; an officer or employee of any state, or an officer or employee of any political subdivision of any state; a court of any state; any person, corporation, association, charitable agency or other entity which receives any child from another state.

Receiving State means the state to which a child is sent, brought or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

Sending Agency means any state; an officer or employee of any state, or an officer or employee of any political subdivision of any state; a court of any state; any person, corporation, association, charitable agency or other entity which sends, brings or causes to be sent or to be brought any child to another state.

Sending State means the state in which the sending agency is located or resides, or the state from which the sending agency sends the child.

Visit means a stay of less than 30 days to provide the child with a social or cultural experience of short duration, such as a stay in a camp or with a friend or relative who has not assumed legal responsibility for providing child care services. A stay of more than 30 days shall be considered a visit if it begins and ends within the period of a child's vacation from school. A visit may not extend beyond 30 days (or the duration of the school vacation period). A stay without an express or implied termination date is a placement and not a visit.

### 7.502: Interstate Compact Administrator for Massachusetts

The Department shall conduct all interstate placement activities through the Office of the Deputy Commissioner, Department of Social Services. The "Compact Administrator" for Massachusetts is the Deputy Commissioner of the Department of Social Services, or his/her designee.

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### 7.503: Applicability of the Interstate Compact and M.G.L. c. 119, § 36

- (1) The Interstate Compact shall apply whenever a sending agency from a state which is a party to the Compact sends, brings, or causes to be sent or to be brought into any other state which is a party to the Compact, any child for placement in foster care or residential or group care, or for placement in a relative's home [other than those persons named in 110 CMR 7.503(3)] or for placement preliminary to a possible adoption.
- (2) Placements made to the Commonwealth by sending agencies from non-member states and foreign countries, or made by the Commonwealth to non-member states and foreign countries, are not subject to the Compact but such placements made to the Commonwealth are subject to the provisions of M.G.L. c. 119, § 36 unless the placement is between persons both of whom are persons listed in 110 CMR 7.503(3).
- (3) Neither the Interstate Compact procedures nor the provisions of M.G.L. c. 119, § 36 shall apply when the sending agency is the child's parent, step-parent, grandparent, adult brother or adult sister, adult uncle or adult aunt, or non-agency guardian and the receiving agency is likewise any such relative of the child or a non-agency guardian.
- (4) The Interstate Compact shall apply to court orders unless they relate to cases exempted by Article VIII of the Compact.
- (5) The Interstate Compact shall not apply to placements which occurred prior to the date of enactment of the Compact by either the state of the sending agency or the state of the receiving agency; however, the provisions of M.G.L. c. 119, § 36 shall apply if otherwise applicable.
- (6) Neither the Interstate Compact nor the provisions of M.G.L. c. 119, § 36 shall apply to any placement with an institution primarily educational in character, any institution caring for the mentally ill or mentally defective or epileptic, or any hospital or other medical facility.
- (7) Neither the Interstate Compact nor M.G.L. c. 119, § 36 shall apply to a visit.
- (8) The Interstate Compact shall apply to any stay across state borders whenever the sending agency requests a home study or supervision of a child by the receiving state.
- (9) The provisions of M.G.L. c. 119, § 36 shall not apply to a sending agency which is a public agency in another state that is a party to the Interstate Compact.
- (10) Adoptions by residents of Massachusetts who finalize the adoption of out-of-state or out-of-country children in another state or country are not governed by either the Interstate Compact or by M.G.L. c. 119, § 36. This exception applies only to cases where the adoption of the child is completed before the child enters the Commonwealth for the first time.
- (11) Both the Interstate Compact and M.G.L. c. 119, § 36 apply, if otherwise applicable, to adoption by residents of Massachusetts who send, bring or cause to be sent or to be brought a child into the Commonwealth pending the finalization of the adoption in another state or country.
- (12) The Interstate Compact shall not apply when a placement is made pursuant to any other interstate compact to which both the sending state and the receiving state are parties or pursuant to any other agreement between the states which has the forte of law.

### 7.504: Placement of Out-of-State Children in Educational Institutions

- (1) Programs conducted by public or private agencies in which children are placed in family homes incident to their attendance at educational institutions in other states are foster care placements within the meaning of the Interstate Compact, because the home rather than the educational institution provides child care and supervision during the time when the child is not in attendance at the school program.

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(2) To facilitate the conduct of such a program, the agency administering it may investigate and prepare reports on the Massachusetts homes in question in advance, and may offer such reports to the Compact Administrator of the Commonwealth as part of the information required in connection with an intended placement, provided that any such report must be current to within six months of the date of its submission.

(3) Any home in which a child is placed or proposed to be placed pursuant to 110 CMR 7.000 shall obtain and maintain such license or approval as a child care or foster home as the laws and regulations of the Commonwealth require. The license or approval must be in full force and effect at the time the sending agency gives notice of the intended placement and at all times during the continuance of the placement. Failure to meet this condition shall be sufficient ground for the Compact Administrator to deny or terminate the placement.

(4) The operator of a program to which 110 CMR 7.504 applies shall:

(a) notify the Compact Administrator of the Commonwealth promptly in writing if the child is returned to his parent's or guardian's home or is sent to another home during the school year.

(b) notify the Compact Administrator of the Commonwealth promptly in writing upon the child's return to his parent's or guardian's home at the end of the school year.

(5) If a child in a program to which 110 CMR 7.000 applies is placed from one home to another the action shall be considered a new placement and shall require the same notifications, furnishing of information and documentation, and receipt of a notice pursuant to Article III(b) of the Compact as an initial placement.

(6) The special procedures of 110 CMR 7.000 shall be available only for programs in which the parents or guardians retain full custodial rights to control (by the giving or withholding of consent or otherwise) the place of abode and participation in the program of the child. Further, this regulation applies only to programs one purpose of which is to afford children educational opportunities but in which residential schools or other residential institutions are not utilized to provide the educational component of the program.

### 7.505: Placement of Out-of-State Children in Medical Institutions

(1) Placement of a child in a medical institution of whatever kind in another state is a placement within the meaning of the Interstate Compact unless the room, board, care and supervision provided at the medical facility are merely incident to medical or psychiatric treatment which the child is receiving, and are to be terminated when the child's medical or psychiatric treatment ends.

(2) Placement in a home for unwed pregnant mothers is a placement within the meaning of the Interstate Compact if the purpose of the facility is to meet the expectant mother's social and emotional needs as well as to provide room and board during pregnancy. Only if the home's services are primarily medical and are confined to the period of the actual delivery and customary post-delivery stay is the placement outside the Compact.

### 7.506: Placement of Out-of-State Children in Residential Institutions

(1) Placement of a child in a residential institution is a placement within the meaning of the Interstate Compact if the institution provides child care or other services which, if provided by a family or individual other than the child's parents, would constitute foster care, with or without payment.

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(2) Where children attend school or other educational programs, but are not housed or cared for on a 24-hour basis by the school or educational program and where a placement within the meaning of the Compact occurs, the placement shall be deemed to be with the person, family, agency or institution which provides the 24-hour a day housing and care during the period of school or other educational attendance.

(3) The type of license, if any, held by an institution may be used as evidence of its character, but whether an institution is either generally exempt from the need to comply with the Interstate Compact procedures or exempt in a particular instance shall be determined by the services the institution actually provides or offers to provide.

7.507: Placement With Parent(s)

(1) No placement under the Interstate Compact occurs nor do the provisions of M.G.L. c. 119, § 36 apply when a court in one state, in connection with the granting of a divorce, awards any form of custody to a parent residing in another state.

(2) If a court enters an order which alters custodial rights which had been previously adjudicated in a divorce, separation or other legal proceeding, and such order places a child with a previously non-custodial parent in a state other than the one in which the child currently resides, there is a placement within the meaning of the Compact.

(3) No placement under the Interstate Compact occurs nor do the provisions of M.G.L. c. 119, § 36 apply when divorced parents agree to a placement of their child with a relative listed in 110 CMR 7.503(3), or when one divorced parent places his/her child with the other non-custodial divorced parent across state lines.

(4) Whenever a state agency has custody of a child or care of a child pursuant to a voluntary placement agreement, and such agency places a child with his/her parent(s) in another state, this constitutes a placement under the Interstate Compact.

(5) Whenever a court in a divorce proceeding awards custody of a child to any third party including a relative listed in 110 CMR 7.503(3) against the wishes of the parents, this constitutes a placement under the Interstate Compact.

7.508: Independent Adoptions

(1) "Independent adoption" is any placement of a child for adoption in the Commonwealth made or facilitated by anyone other than the Department or by anyone other than an adoption or placement agency licensed or approved by the Department of Early Education and Care and any placement of a child from the Commonwealth for adoption in another state made or facilitated by anyone other than a placement agency licensed by the receiving state and anyone other than the Department or an adoption or placement agency licensed or approved by the Department of Early Education and Care.

(2) Independent adoptions are illegal in the Commonwealth. See M.G.L. c. 28A, § 11(c). Independent adoptions, for purposes of 110 CMR 7.508, shall include both children placed in the Commonwealth and children placed from the Commonwealth, for purposes of adoption.

7.509: Identified Adoptions

(1) An "identified adoption" means an adoption where the parent executes a written surrender of his/her child directly to a particular person or agency.

(2) Identified adoptions of children brought into the Commonwealth are permitted provided that the placement is made by the Department or by an adoption or placement agency licensed or approved by the Office for Children, and is approved by the Compact Administrator for the Commonwealth.

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(3) Identified adoptions of Massachusetts children in another state are permitted provided that a home study is prepared in accordance with the laws of the receiving state and is submitted for approval to the Compact Administrator for the Commonwealth, prior to the placement.

(4) Any adoption or placement agency licensed or approved by the Office for Child Care Services (including the Department of Children and Families) which agrees to accept a child from another state and to place that child in a particular identified home in the Commonwealth can thereafter refuse to place the child in that particular home based on the results of a completed home study.

(5) The Interstate Compact shall apply to all identified adoptions of children born to mothers who are out-of-state residents, regardless of whether the surrender was executed in the sending state or in Massachusetts, unless the child is surrendered directly to one of the exempt relatives or guardian as enumerated in 110 CMR 7.503(3).

### 7.510: Guardians

(1) The Interstate Compact procedures shall not apply to a non-agency guardian sending or bringing a child into a receiving state and leaving the child with a non-agency guardian or any of the exempt relatives enumerated in 110 CMR 7.503(3) in the receiving state.

(2) The Interstate Compact and the provisions of M.G.L. c. 119, § 36 shall apply whenever a resident of the Commonwealth is appointed guardian of a child by a court of another state for the purpose of securing an adoption in the Commonwealth.

### 7.511: Foreign Children

(1) The Interstate Compact procedures do not apply to inter-country placement of children. M.G.L. c. 119, § 36 governs the placement of foreign-born children into the Commonwealth for the purpose of adoption.

(2) The Interstate Compact procedures shall apply to the interstate placement of foreign-born children, whether or not the child was ever physically in the sending state, so long as such sending state caused the child to be sent or brought into another state.

### 7.512: Moves Across State Borders

(1) Move by Child. An intra-state placement not subject to the Compact becomes an interstate placement subject thereto when the child moves to another state.

Example: The Department has custody or care of a child and places the child with a foster family in Massachusetts. If the foster family and child thereafter move to Vermont, the Interstate Compact procedures must be followed.

(2) Move by Parents. An intra-state placement not subject to the Compact does not become subject to the Compact when the parent(s) move to another state but the child remains in the state where the original placement occurred.

Example: The Department has custody or care of a child and places the child with a foster family in Massachusetts. If the parents who placed the child with the Department thereafter move to Vermont, but the child remains in Massachusetts, the Interstate Compact is not involved.

### 7.513: Runaway Children

Whenever a child is a runaway and crosses state borders, the provisions of M.G.L. c. 119, App. §§ 1 through 7 shall govern the return or retention of the child.

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### 7.514: Procedural Requirements When Sending Agency is Within the Commonwealth

- (1) Any sending agency which intends to send, bring, or place a Massachusetts child into another state shall give advance written notice of its intention to the Compact Administrator of the Commonwealth and of the receiving state.
- (2) The sending agency shall thereafter furnish the Compact Administrator of the Commonwealth and of the receiving state with all information requested by each Compact Administrator, provided that such information will consist of at least the following:
- (a) The name, date and place of birth of the child.
  - (b) The identity and address(es) of the parent(s) and legal guardian(s).
  - (c) The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring or place the child.
  - (d) A full statement of the reasons for such proposed action.
  - (e) Social assessment of the child and family (Form ICPC-101).
  - (f) Copy of all court documents relating to custody or adoption of the child, if applicable.
  - (g) A full statement of what the receiving state is being asked to do regarding the child.
  - (h) Copy of Request to Place Child (Form 100A), if applicable.
  - (i) Copy of Report on Placement Status Change of Child (Form ICPC-100B) for all retroactive applications, if applicable.
  - (j) Evidence that surrenders by parent(s) and/or termination of parental rights were accomplished fully in accordance with the laws of Massachusetts, or evidence that the process of terminating such rights has been commenced in accordance with the laws of Massachusetts.
  - (k) A home study of the proposed placement site conducted by a placement agency licensed or approved by the receiving state.
  - (l) In the case of placement for purposes of adoption, a description of each expense incurred or to be incurred by the adoptive parents, the amount of each such expense, the name and address of the payee, and the date of payment.
  - (m) In the case of placement for purposes of adoption, medical background information on the child (if born) and on the natural parents.
  - (n) Evidence of authority of sending agency to place child which may consist of any of the following as appropriate.
    - 1. Court order,
    - 2. Executed Voluntary Placement Agreement;
    - 3. A notarized statement by a parent or legal guardian acting as a sending agency;
    - 4. Executed surrender form executed in accordance with the requirements of M.G.L. c. 210.
  - (o) Whenever a private child welfare agency is the sending agency, a copy of its current license.
  - (p) If a child is of Indian heritage, verification that the placement is in compliance with the Indian Child Welfare Act.
  - (q) A pre-placement visitation plan which is consistent with good social work practice.
- (3) The Compact Administrator of the sending state shall send copies of the information outlined above to the Compact Administrator in the receiving state.

### 7.515: Financial Responsibility for the Child

- (1) A sending agency in the Commonwealth shall continue to have financial responsibility for support and maintenance of any Massachusetts child placed out-of-state, during the period of the out-of-state placement (including any subsidized adoption which occurs out-of-state).
- (2) An out-of-state sending agency shall continue to have financial responsibility for support and maintenance of any child placed in the Commonwealth during the period of the placement (including any subsidized adoption which occurs in the Commonwealth).

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(3) A sending agency in the Commonwealth may contract with any third party to shift financial responsibility for an out-of-state placement to such third party, provided that in the event of default by the third party financial responsibility for the child as between the receiving state and sending agency remains with the sending agency in the Commonwealth.

(4) A sending agency in the Commonwealth shall not condition a placement with a receiving state upon the latter's assumption of financial responsibility for the child.

(5) The laws of the receiving state shall govern whether a particular cost is a cost of placement which shall be borne by the sending agency, provided that the rate at which foster care payments shall be paid shall be the rate established by the Commonwealth, regardless of whether it is the sending or receiving state.

(6) Nothing in 110 CMR 7.00 shall prevent the sending agency from pursuing its right to reimbursement from parties responsible for the support of the child.

(7) Whenever parent(s) terminate their parental rights and surrender the child to a person or agency in the Commonwealth, such parents by virtue of such surrender shall not retain any jurisdiction over the child but jurisdiction and financial responsibility for the child shall be vested in a state child welfare agency or other financially responsible entity which must be named as the sending agency. Financial responsibility shall include the support and maintenance of the child during the pre-adoption period of the child's placement in the Commonwealth.

### 7.516: Procedural Requirements When the Commonwealth is the Receiving State

(1) Whenever the Interstate Compact procedures or the provisions of M.G.L. c. 119, § 36 are applicable, all placements of children across state borders into the Commonwealth shall require the advance approval, in writing, of the Compact Administrator of the Commonwealth.

(2) The Compact Administrator of the Commonwealth shall approve the placement so long as the proposed placement conforms to the laws of the Commonwealth, and does not appear to be contrary to the interests of the child. The placement need not be the best possible placement to be approved, so long as it is reasonable and satisfactory considering all the relevant circumstances.

(3) The Compact Administrator shall not approve a placement of a child into the Commonwealth whenever the provisions of the Interstate Compact or the provisions of M.G.L. c. 119, § 36 are applicable, unless the following are submitted in advance to the Compact Administrator, except that 110 CMR 7.516(a) and (b) shall not be required from a public sending agency in a state which is a party to the Interstate Compact:

(a) An individual or blanket bond running to the Commonwealth in such penal sum and with such surety or sureties as the Department may approve.

(b) A written application containing such information relative to such child as the Department may require and which includes the statement:

1. that all statements contained in such an application are true;
2. that any such child becoming a public charge during his minority shall be removed from the state by the sending agency not later than 30 days after notice from the Department;
3. that such child shall be removed from the state by the sending agency immediately upon his release from any penal or reformatory institution or training school to which he has been committed, within three years of his arrival within the state, for juvenile delinquency or crime;
4. that such child shall be placed or boarded by the sending agency under such agreement as will secure to him a proper home and surroundings, and as will render his custodian responsible for his proper care, education and training, under adequate supervision and subject to annual visitation by an agent; and

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5. that such reports relative to the child shall be made to the Department as it may require:
- (c) The name, date and place of birth of the child.
  - (d) The identity and address(es) of the parent(s) and legal guardian(s).
  - (e) The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring or place the child.
  - (f) A full statement of the reasons for such proposed action.
  - (g) Social assessment of the child and family (Form ICPC-101).
  - (h) An opinion letter from a member of the Bar of the sending state that surrenders by parent(s) and/or termination of parental rights were accomplished fully in accordance with the laws of the sending state, or evidence that the process for terminating such rights has been commenced in accordance with the laws of the sending state.
  - (i) Copy of all court documents relating to custody or adoption of the child, if applicable.
  - (j) A full statement of what the Commonwealth is being asked to do regarding the child.
  - (k) Copy of Request to Place Child (Form ICPC 100A), if applicable.
  - (l) Copy of Report on Placement Status Change of Child (Form ICPC 100B), for all retroactive applications.
  - (m) A home study of the proposed placement site in the Commonwealth conducted by a placement agency licensed or approved by the Office for Children.
  - (n) If a child is of Indian heritage, verification that the placement is in compliance with the Indian Child Welfare Act.
  - (o) In any case where parent(s) have terminated their parental rights and have surrendered their child to a person or agency in the Commonwealth, a statement naming as the sending agency, a state child welfare agency or other financially responsible entity, signed and acknowledged by said financially responsible entity as to its financial obligation.
  - (p) In the case of placement for purposes of adoption, a description of each expense incurred or to be incurred by the adoptive parents, the amount of each such expense, the name and address of the payee and the date of payment.
  - (q) In the case of placement for purposes of adoption, medical background information on the child (if born) and on the natural parents.
  - (r) Evidence of authority of sending agency to place child which may consist of any of the following as appropriate:
    - 1. Court order;
    - 2. Executed Voluntary Placement Agreement;
    - 3. A notarized statement by a parent or legal guardian acting as a sending agency;
    - 4. Executed surrender form executed in accordance with the requirements of the sending state.
  - (s) Whenever a private child welfare agency is the sending agency, a copy of its current license.
  - (t) A pre-placement visitation plan which is consistent with good social work practice.
- (4) The receiving agency shall arrange for the actual placement of the child and shall supervise the placement if requested to do so by the sending agency. The receiving agency may make recommendations regarding the placement, but the sending agency shall make all the decisions, provided that whenever the receiving agency requests the removal of the child out of the Commonwealth, the sending agency shall remove such child.
- (5) The receiving agency shall conduct a home study of the family with whom placement is to be made. Within 30 days of receiving a request for the conduct of such home study, the receiving agency shall prepare such home study and shall make a recommendation on the suitability of the placement to the Compact Administrator of the Commonwealth.

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7.516: continued

(6) Notwithstanding any provisions to the contrary, whenever a child is placed into the Commonwealth under the provisions of the Interstate Compact or M.G.L. c. 119, § 36, and such child is emotionally, physically or mentally handicapped so that the need for such placement will reasonably be expected to continue past the child's 18th birthday, the Commonwealth, as the receiving state, shall condition the acceptance of the child into the Commonwealth on the execution of an agreement with the sending agency that the financial responsibility for such individual shall continue with the sending agency so long as the individual remains in the Commonwealth and requires financial assistance, provided, however, that the sending agency shall no longer be financially responsible if the individual is adopted or is discharged from the placement with the concurrence of the Compact Administrator for the Commonwealth.

7.517: Jurisdiction Under the Interstate Compact

(1) The sending agency shall have jurisdiction over the child sufficient to determine all matters relative to the custody, supervision, care, treatment and disposition of the child in the same manner as if the child had remained in the sending agency's state, until the child is adopted, reaches majority age, becomes self-supporting or is discharged from the placement in question with the concurrence of the appropriate authority in the receiving state.

(2) The child's legal residence shall be in the state of the sending agency until one of the events stated in the 110 CMR 7.517(1) occurs.

(3) The sending agency shall have jurisdiction sufficient to effect or cause the return of the child or his/her transfer to another location.

(4) The sending agency shall have the power to secure periodic reports from the receiving state concerning the course of the placement.

(5) Whenever parent(s) terminate their parental rights and surrender their child to a person or agency in the Commonwealth, such parents by virtue of such surrender shall not retain any jurisdiction over the child but jurisdiction and financial responsibility over the child shall be vested in a state child welfare agency or other financially responsible entity which must be named as the sending agency.

(6) The receiving state shall be responsible for providing supervision of the placement, if so requested by the sending agency.

(7) The receiving state shall have jurisdiction over the child sufficient to deal with an act of delinquency or crime committed in the receiving state.

(8) The receiving state shall have jurisdiction over the child sufficient to deal with protecting the child from abuse or neglect committed in the receiving state.

(9) Both the sending state and the receiving state shall have jurisdiction sufficient to punish or subject to penalty anyone violating the terms of the Interstate Compact.

7.518: Law Governing

(1) Whenever a child is placed across state borders, the sending agency shall comply with the applicable laws of the receiving state governing the placement of children therein.

(2) After the child has been placed across state borders the laws of the receiving state shall govern all matters relating to the child, other than all matters in relation to the custody, supervision, care, treatment and disposition of the child which shall be governed by the laws of state of the sending agency retaining jurisdiction over the child.

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- (3) The laws of the receiving state shall apply at a minimum:
  - (a) to a care and protection proceeding brought against the placement in the receiving state;
  - (b) to a determination of whether medical, educational, support or other payments shall be made on behalf of the child;
  - (c) to a determination of the legality of the placement in the receiving state;
  - (d) to a determination of the age of majority.
- (4) In the event that the laws of the sending state and receiving state are in conflict regarding the placement of the child, the laws of the receiving state shall govern.
- (5) Whenever a sending state or a receiving state exercise jurisdiction to punish or subject to penalty anyone for violation of the Interstate Compact, the laws of the state exercising jurisdiction shall apply.

### 7.519: Enforcement

- (1) Whenever the Compact is applicable anyone sending, bringing or causing to be sent or brought into any receiving state a child in violation of the terms of the Compact shall also be deemed to be in violation of the laws respecting the placement of children of the receiving state and of the state in which the sending agency is located or from which it sends or brings the child. The term anyone in the preceding sentence shall include a court of competent jurisdiction.
- (2) A violation of the terms of the Interstate Compact shall also be a violation of M.G.L. c. 119, § 36; M.G.L. c. 15D, §§ 6(c), 6(e) and 15(a) and M.G.L. c. 210, as applicable, together with such other statutes and regulations of the Commonwealth as are applicable to the placement of children.
- (3) The Department may, in its discretion, refer matters involving violation of the terms of the Interstate Compact or any of the above-listed statutes to any appropriate investigatory or prosecutorial agency or board in the sending state or the receiving state, including but not limited to the Office of the Attorney General, Office of the District Attorney, Executive Office of Health and Human Services, Department of Early Education and Care, Board of Bar Overseers.

### 7.520: Effect of Violation on Placements

- (1) Failure by any receiving agency or sending agency, including a court, to utilize Interstate Compact procedures whenever the Compact applies renders the placement illegal.
- (2) Such illegal placement shall not permit the sending agency to avoid the financial responsibility for the placement or other requirements of the Compact which would rest with the sending agency had the Compact not been violated.
- (3) Whenever a placement is illegal because the Compact, which was applicable, was either not used or its provisions were violated, such placement shall be brought into compliance with the Compact or the placement shall be terminated.
- (4) Whenever the provisions of M.G.L. c. 15D, §§ 6(c) or 6(e) have been violated the Department of Early Education and Care may petition the Superior Court to enjoin any such violation or to take such other action as equity and justice may require. See M.G.L. c. 28A, § 16.

### 7.521: Termination of Placements

- (1) A placement made pursuant to the Interstate Compact or the provisions of M.G.L. c. 119, § 36 shall terminate only when the child is adopted, reaches majority under the laws of the receiving state, becomes self-supporting, or is discharged from the placement in question with the concurrence of the Compact Administrator in the receiving state.

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7.521: continued

(2) If the placement is in violation of the Interstate Compact or M.G.L. c. 119, § 36, the sending agency may not unilaterally terminate its responsibilities as to such placement.

(3) If the placement is in violation of the Interstate Compact or M.G.L. c. 119, § 36, such placement may be terminated only upon the conditions set forth at 110 CMR 7.521(1).

7.522: Confidentiality

(1) A receiving agency of the Commonwealth which has been requested to perform a home study by a sending agency shall release the information contained in the home study to the sending agency upon the same conditions as would apply if the sending agency were a Massachusetts agency with jurisdiction over the child to be placed.

(2) The laws of the Commonwealth regarding confidentiality shall govern the release of information by the sending agency and the Compact Administrator.

(3) See Confidentiality, generally at 110 CMR 12.00 et seq.

7.523: Administrative Review

Any person aggrieved by any action or inaction of the Department involving the placement of children across state lines shall have the right to a fair hearing on the matter pursuant to 110 CMR 10.00 et seq.

REGULATORY AUTHORITY

110 CMR	7.000:	M.G.L. c. 18B, §§ 3(B) and 15; c. 119, §§ 51B(7) and 51B(8);
	7.010:	M.G.L. c. 18B, § 7;
	7.020:	M.G.L. c. 18B, § 2(A)(6) and c. 119, § 51B(7);
	7.030:	M.G.L. c. 18B, § 2(A)(13) and c. 119, § 51B(7);
	7.040:	M.G.L. c. 18B, §§ 2, 3, 4, 7; and c. 119, § 51B(7);
	7.050:	M.G.L. c. 18B, §§ 2(A)(8) and 2(A)(13);
	7.060:	M.G.L. c. 18B, §§ 2(A)(10) and c. 119, § 51B(7);
	7.070:	M.G.L. c. 18B, § 2(A)(7) and c. 119, § 51B(7);
	7.080:	M.G.L. c. 18B, § 2(A)(1);
	7.090:	M.G.L. c. 18B, §§ 2(A)(14) and 2(A)(16); c. 119, § 51B(7); c. 119, § 23G;
	7.100:	M.G.L. c. 18B, § 2; M; c. 119, Appendix; c. 119, §§ 39E through J and c. 119, §§ 51A through F;
	7.200:	M.G.L. c. 18B, § 2(A)(5); c. 18B, § 21 and M.G.L. c. 210;
	7.300:	M.G.L. c. 119, § 23 and c. 18B, § 2(A)(3);
	7.400:	M.G.L. c. 71B;
	7.500:	M.G.L. c. 119, Appendix ("The Interstate Compact"); c. 119, § 36 and c. 28A, § 6 (c).