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## **Unveiling the Secrets: Open Adoption, Medical Records & Original Birth Certificates**

By: Nicole Benis

To help those who have been adopted come to terms with their biological roots, and learn about their genetic makeup, it is imperative that states adopt open birth certificate laws.<sup>1</sup> The open birth certificate concept has grown in popularity over time as various states have implemented statutes that allow adopted individuals to learn about their genetic information, potential health concerns and family history even if they have no contact with their biological families<sup>2</sup>. While there is a concern that the biological parents want to put the adoption behind them, these biological parents should be required to disclose important medical information and update medical records over the years. To successfully inform adopted children of their biological roots and family medical history, states should adopt a version of an open birth certificate statute permitting said information to be shared.

Historically, adoption records have been closed to protect the identity of the biological mother. Keeping adoption records secretive also ensured that adoptive parents did not feel shame around infertility, and adoptees did not have to fear being labeled as illegitimate children if they were born out of wedlock<sup>3</sup>. Throughout history, society has become more accepting of adoption. Also, the psychological need for a sense of identity has been recognized for adoptees<sup>4</sup>. The stigma surrounding unwed mothers has also changed over time. Family dynamics have changed since the early 1900s. Due to changes in societal norms, there has been a shift towards sharing information.

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<sup>1</sup> NY PUB HEALTH LAW § 4138e (McKinney 2020).

<sup>2</sup> Eg. N.J STAT. ANN. § 26:8-40.34; NY PUB HEALTH LAW § 4138e (McKinney 2020).

<sup>3</sup> Elizabeth J. Samuels, *Article: The Idea of Adoption: An Inquiry into the History of Adult Adoptee Access to Birth Records*, 53 Rutgers L. Rev. 367, 368 (2001).

<sup>4</sup> *The Adoption History Project, Adoption History in Brief*, 2012, <https://pages.uoregon.edu/adoption/topics/adoptionhistbrief.htm>.

Genetic testing, research and advances in medicine overall has led to the need for open birth records. Adoptees should be granted access to genetic information and medical data from their biological parents that could shape their future. Therefore, the best solution is for states to enact statutes that allow for open birth records to provide medical information.

This paper will only discuss voluntary adoptions of a child that will free the parents of parental rights, placing the child up for adoption by another party. Section I of this paper will discuss the history of adoption overall. Section II of this paper will discuss current state laws dealing with the good cause petitions to the court for birth records, adoption registries, contact information preferences and medical record access. Section III of this paper will discuss the solution to lack of medical information obtained by adoptees: open access to birth records that will give important medical insight for the adoptee.

## I. **History of Adoption and Adoption Overview**

### a. **First Adoption Laws**

Today, there is no national adoption law in the United States.<sup>5</sup> Adoption laws are governed by the state legislatures across the country.<sup>6</sup> While adoption legislation did not appear until 1851 in Massachusetts, adoptions have been taking place for hundreds of years.<sup>7</sup> Formal adoption laws allow for biological parents to give up their rights to the child, severing all ties, and giving adoptive parents the parental rights to the adopted child once they are court approved.<sup>8</sup> While many people assume that the United States has always had a comprehensive adoption law, adoptions in America

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<sup>5</sup> Tammy M. Somogyi, *Comment: Opening Minds to Open Adoption*, 45 U. Kan. L. Rev. 619, 619 (1997).

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> Id.

did not involve the law until the late 19<sup>th</sup> century and early 20<sup>th</sup> century.<sup>9</sup> Other states followed Massachusetts' lead, but still, in 1900, "formalizing adoptive kinship in a court was very rare."<sup>10</sup> However, by 1970, there was a peak in adoption.<sup>11</sup> By 1970, 175,000 adoptions were finalized annually.<sup>12</sup>

b. **Early American Adoptions**

The mid 1900s created a wave of change for adoption.<sup>13</sup> Originally, adoptions were handled in private without court oversight.<sup>14</sup> Until the 19<sup>th</sup> century, American adoptions were handled by mutual acquaintances of the biological and adoptive families.<sup>15</sup> In the 1920s there was "virtually no confidentiality or secrecy provisions in adoption law."<sup>16</sup> Between the 1930s and the 1950s, practically all of the states in America made adoption records not only a secret to the public, but to the parties involved as well.<sup>17</sup> At this point, birth parents and adoptive parents did not know the identity of the other, and adoptees could never learn the identity of their biological parents.<sup>18</sup> With a wave of change coming to the adoption process as a whole in the 1930s, states began issuing

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<sup>9</sup> Elizabeth J. Samuels, *Article: The Idea of Adoption: An Inquiry into the History of Adult Adoptee Access to Birth Records*, 53 Rutgers L. Rev. 367, 368 (2001).

<sup>10</sup> *The Adoption History Project, Adoption History in Brief*, 2012, <https://pages.uoregon.edu/adoption/topics/adoptionhistbrief.htm>.

<sup>11</sup> Id.

<sup>12</sup> Id.

<sup>13</sup> Samuels, *supra*, at 369.

<sup>14</sup> *The Adoption History Project, Adoption History in Brief*, 2012, <https://pages.uoregon.edu/adoption/topics/adoptionhistbrief.htm>.

<sup>15</sup> John M. Stoxen, *The Best of Both Open and Closed Adoption Worlds: A Call for the Reform of State Statutes*, *Journal of Legislation*: Vo. 13: Iss. 2, Article 16, 292, 298, available at: <https://scholarship.law.nd.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1409&context=jleg> (1986).

<sup>16</sup> Samuels, *supra*, at 374.

<sup>17</sup> Id.

<sup>18</sup> Id.

new birth certificates to adoptive parents.<sup>19</sup> These new birth certificates substituted the birth parents' names with the adoptive parents' names.<sup>20</sup>

c. **Reforms to Closed Adoptions in the 1960s/1970s**

Throughout the years, the importance of records being more “open” gave adoptees, adoptive parents and biological parents some insight into the transaction they were entering into. During the 1960s and 1970s when social changes across the board emerged, changes came to adoption as well.<sup>21</sup> By 1960, nearly all states reported statutes on adoption and birth certificates.<sup>22</sup> In twenty-eight of the forty-nine reporting states the original birth certificates could only be accessed through a court order.<sup>23</sup> Further, of the twenty-eight states, seven of the states allowed adoptive parents to review and inspect the records.<sup>24</sup> In the adoption realm, the social influence of the 1960s and 1970s helped adoptees, biological parents and adoptive parents alike. During this time, reproductive freedom, help for single mothers, and an increase in the divorce rate created changes in society that helped change the trajectory of adoption laws.<sup>25</sup>

As society changed throughout the 1970s, adoptees yearned to learn about their biological parents.<sup>26</sup> Social workers and psychiatrists in the 1970s noted that open records would help their patients.<sup>27</sup> In the years following the wave of a more “open-minded” society, state laws were

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<sup>19</sup>Id. at 376.

<sup>20</sup>Id.

<sup>21</sup> Samuels, *supra*, at 371.

<sup>22</sup> Id. at 378.

<sup>23</sup> Id.

<sup>24</sup> Id.

<sup>25</sup> Id.

<sup>26</sup> Id. at 422.

<sup>27</sup> Id.

passed to create both passive and active registries to protect the identity of birth parents, while still giving adoptees the information they sought.<sup>28</sup>

d. **Types of Adoption**

i. **Closed Adoption**

Closed adoption was the main form of adoption for much of American history. A traditional closed adoption severs the ties between biological parent and child, meaning the identity of all parties is generally unknown. “The natural parents of the person adopted, if living, shall, from and after the entry of the final order of adoption, be relieved of all legal duties and obligations due from them to the person adopted, and shall be divested of all rights with respect to such person. Historically, closed adoptions were favored as many thought it was more beneficial for all parties involved.”<sup>29</sup>

Sealing adoption records helps promote the formation of the adoptive family. Adoptive parents have a strong interest in maintaining closed adoption records so “they may raise [the] child without fear of interference from the natural parents and without fear that the birth status of the illegitimate child will be revealed or used as a means of harming the child or themselves.”<sup>30</sup>

Historically, the identity of birth mothers remaining private was vital in the success of adoptions.<sup>31</sup> Birth mothers did not want the stigma of being involved in an out of wedlock pregnancy.<sup>32</sup> Adoptive parents did not want to feel that their bond with the child was any less, or, suffer from the stigma attached to infertility.<sup>33</sup> Society also felt it was best to keep identities a secret to protect

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<sup>28</sup> Id. at 431.

<sup>29</sup> *Crumpton v. Mitchell*, 303 N.C. 657, 661 (N.C. 1981).

<sup>30</sup> *In the Interest of R.D.*, 876 N.W.2d 786, 795 (Iowa 2016).

<sup>31</sup> What You Need to Know About the History of Adoption, *American Adoptions*, <https://www.americanadoptions.com/adoption/history-of-adoption>.

<sup>32</sup> Id.

<sup>33</sup> Id.

the adoptee from feeling like they did not belong.<sup>34</sup> A closed adoption ensures that the biological and adoptive parents never meet.<sup>35</sup> Further, upon completion of the adoption, the child would receive a new birth certificate with their adoptive parents' name on it and any record with the biological parents' information on it would be sealed.<sup>36</sup> Some states allow people involved in confidential (closed) adoptions to have access to limited information about their biological parents such as non-identifying information and limited medical information.<sup>37</sup>

Closed adoptions were favored in the early to mid 1900s.<sup>38</sup> People believed that creating a new birth certificate and sealing the birth certificate containing the biological parents' information would "create a legal fiction" of a new start for all parties involved.<sup>39</sup> Closed adoptions allowed adoptive families to start a new life with their child and not have a biological family interfere later on.<sup>40</sup> There was a sense that adoptive families did not want a young mother with psychological issues, drug abuse or a bad family background disrupting their new family.<sup>41</sup> Birth mothers favored closed adoptions so they could not be found later in life by the adoptee.<sup>42</sup> For instance, if a birth mother wanted to keep the pregnancy and adoption a secret, a closed adoption would facilitate this wish better. As societal norms changed in this country, so did the adoption structure.

In a closed adoption, the adoptee is deprived of important medical information from their biological family.<sup>43</sup> If the adoptee has medical problems that are genetic in nature, it is a huge

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<sup>34</sup> Id.

<sup>35</sup> Id.

<sup>36</sup> *Supra.*

<sup>37</sup> *Supra.*

<sup>38</sup> *Supra.*

<sup>39</sup> Id.

<sup>40</sup> What You Need to Know About the History of Adoption, *supra* note 31.

<sup>41</sup> Id.

<sup>42</sup> Id.

<sup>43</sup> Id. at 296.

disadvantage for the adoptee to not have medical information as there may be something that someone genetically connected could help with (i.e. kidney donation, bone marrow etc.).<sup>44</sup> In a closed adoption, if the adoptive parents do not even know the name of the biological parents, or the adoptee has no chance to access the birth certificate, there is a huge gap in medical information that could be lifesaving.<sup>45</sup> Also, in a closed adoption, adoptees are not privy to learning about biological siblings that they may have.<sup>46</sup> Having a blood sibling could not only help foster a strong biological bond, but knowing blood siblings could help in the event of a medical emergency for either party.<sup>47</sup>

## **ii. Open Adoptions**

Adoptions are categorized as either open or closed. Open adoption is an arrangement between the adoptive parents and one or more members of the child's biological family permitting visitation after the child has been formally adopted.<sup>48</sup> Open adoption agreements are like contracts between the biological and adoptive families that differ based on the scenario.<sup>49</sup> Some people claim that having natural parents involved in the child's life can be disruptive, while others theorize that trying to totally eliminate natural parents is wrong and could have a negative impact on the adoptee.<sup>50</sup>

Some states outwardly prohibit open adoption agreements, stating that adoption agreements conflict with the statutory enactments.<sup>51</sup> On the theory that an adoption creates finality,

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<sup>44</sup> Id.

<sup>45</sup> Id.

<sup>46</sup> Id.

<sup>47</sup> Id.

<sup>48</sup> *In re Guardianship of K.H.O.*, 736 A.2d 1246, 1258 (N.J. 1999).

<sup>49</sup> Id.

<sup>50</sup> Id.

<sup>51</sup> Id. at 362.



some states who ban adoption agreements do not allow visitation.<sup>52</sup> However, other states allow informal open adoption agreements, recognizing the potential for visitation without making a legally enforceable contract.<sup>53</sup> “Agreements that permit continued contact between biological relatives and adoptive parents and are entered into with full counselling and advice, are completely voluntary and mutual, and are in the best interests of the child, may be recognized.”<sup>54</sup> Essentially, open adoptions can create the “best of both worlds” by allowing the biological parents to have some form of contact with the child, while the adoptive parents are charged with raising the child.

Open adoptions, also known as nonconfidential adoptions, allow biological and adoptive parents to know information about each other.<sup>55</sup> Biological parents can also meet potential adoptive parents and the biological parents may choose the adoptive parents that will adopt their child. Essentially, how open an open adoption is, depends on the wants and needs of the parties involved.<sup>56</sup> “The goals of open adoption are: to minimize the child’s loss of relationships, to maintain and celebrate the adopted child’s connections with all the important people in his or her own life, and to allow children to resolve losses with truth rather than fantasy.”<sup>57</sup> Open adoption allows biological parents and adoptive parents to achieve their respective outcomes from the process.

e. **State’s interest in adoption**

The state has a desire to encourage adoptions, as adoptions benefit the biological parents, the adoptive parents and the adoptee. Voluntary adoption allows biological parents to relinquish their

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<sup>52</sup> Id.

<sup>53</sup> Id.

<sup>54</sup> Id.

<sup>55</sup> Stoxen, *supra*, at 298.

<sup>56</sup> Leigh Gaddie, *Children’s Interest: Comment: Open Adoption*, 22 J. Am. Acad. Matrimonial Law, 499, 500 (2009).

<sup>57</sup> Id.

legal rights to the child.<sup>58</sup> The state has an interest in ensuring consent with adoptions.<sup>59</sup> Regardless of the state, adoption proceedings require that the biological parents voluntarily and knowingly consent to the adoption.<sup>60</sup> Adoptions become final once the court has determined that voluntary and informed consent has been obtained by the biological parents.<sup>61</sup> Then, courts are charged with determining if the adoptive parents would be suitable parents.<sup>62</sup> The court measures the adoptive parents' ability to parent by the "best interest of the child."<sup>63</sup> The best interest of the child is the only factor that matters to the court; not the best interest of the biological parents or the adoptive parents.<sup>64</sup> An adoption does not truly become final until a probationary period has elapsed and the 'best interest' of the child is verified.<sup>65</sup>

## II. Interpretation of State Adoption Laws

Science and medicine have evolved over time which explains the need for the opening of birth records. In more recent years, states have enacted laws that allow for the opening of birth records. With medical research advancements, it is in the best interest of adoptees to learn medical information that could shape their future. While not completely opening birth records, other states have used various statutes to grant adoptees access to information about their birth families. Adoptees can learn information about their birth parents through a number of ways, including: closed birth records with judicial interference for good cause; adoption registries and contract preferences; and access to birth certificate information.

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<sup>58</sup> Luis Acosta, Adoption Law: United States, 2015, available at: <https://www.loc.gov/law/help/adoption-law/unitedstates.php>, (last visited: August 2, 2020).

<sup>59</sup> Id.

<sup>60</sup> Id.

<sup>61</sup> Id.

<sup>62</sup> Id.

<sup>63</sup> Id.

<sup>64</sup> Id.

<sup>65</sup> Id.

### A. “Good Cause” Petitions to Unseal Birth Records

Before any type of “open birth record” laws existed, and in states where open birth certificate laws do not exist, adoptees are required to petition to the court to show “good cause” for their records. Good cause statutes from various states require an adoptee to petition to the court for information. For example, in Hawaii, adoption records are to remain sealed and are not broken unless various steps have been taken.<sup>66</sup> Hawaii’s statute that protects birth records states that the seal on birth records shall not be broken or inspected by any person, including the parties, except for a few reasons, one including: “Upon order of the family court a showing of good cause...”<sup>67</sup> The Iowa Court discussed “good cause” as: “...an escape valve from the generally impenetrable nature of adoption records [that] permits individual judicial treatment where circumstances and justice so require.”<sup>68</sup> However, the state legislatures generally only permit “good cause” if the information remaining confidential would lead to harmful results in a particular case.<sup>69</sup>

Good cause decisions are determined on a case-by-case-basis.<sup>70</sup> In a good cause case, the burden is on the adoptee to show there was a compelling need for identifying information.<sup>71</sup> Generally, courts have held that “good cause” exists when unsealing of birth records is required “upon an appropriate showing of psychological trauma or medical need.”<sup>72</sup> While different cases have yielded varying results, good cause allowing disclosure of biological family’s medical

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<sup>66</sup> Access to Adoption Records, Children’s Bureau/ACYF/ACF/HHS, <https://www.childwelfare.gov>, at 23 (last visited August 2, 2020).

<sup>67</sup> HRS § 578-15(b)(1) (LexisNexis 2016). (*See also* Iowa Code § 600.16A, where Iowa statute requires many steps to be taken for an adoptee to prove good cause in unsealing records; MCLS § 710.67, where Michigan statute states that adoption records must be sealed and locked in separate files and shall only be opened for good cause shown expressly permitting inspection of a copy.)

<sup>68</sup> *In re Adoption of S.J.D.*, 641 N.W.2d 794, 799 (Iowa 2002).

<sup>69</sup> Id.

<sup>70</sup> Id.

<sup>71</sup> Id. at 799-800.

<sup>72</sup> Id.

information must go farther than just “mere curiosity.”<sup>73</sup> Unfortunately, being that the burden to prove “good cause” is on the adoptee, often courts do not find in favor of unsealing the records, leaving the adoptee with no source of information to help them with their medical or psychological issues.

While some people may argue that “good cause” is the best option, this route is very difficult for adoptees. Even if the good cause process gives adoptees information, there is a high burden of proof that the adoptee must meet. Further, the stress, cost and time needed for litigation to prove good cause make the need for open medical records a necessity for adoptees across the country.

### **Adoption Registries and State Adoption Law**

#### **Contact Preferences**

In the wake of state laws regarding adoptions and the sealing of birth certificates adoption reformers turned to private or consensual adoption registries to create networks for parties of an adoption.<sup>74</sup> State registries are available even in confidential adoptions, so adoptees can get in contact with birth families years later.<sup>75</sup> States that have registration statutes usually have mutual consent registries.<sup>76</sup> In a mutual consent registry, biological parents and adoptees can register and state their desire to meet.<sup>77</sup> However, this can usually only happen once the adoptee turns eighteen.<sup>78</sup> If an adoptee signs up for a state registry to get in contact with biological parents, the state adoption personnel will look at the files to determine whether or not the biological parents

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<sup>73</sup> Id.

<sup>74</sup> Stoxen, *supra* at 301.

<sup>75</sup> Id.

<sup>76</sup> Id.

<sup>77</sup> Id.

<sup>78</sup> Id.

have consented to the release of information.<sup>79</sup> If in fact the biological parents consent to the release of their contact information, the original birth certificate of the adoptee is released as well.<sup>80</sup>

There are also search and consent registries that some states have.<sup>81</sup> The search and consent registries are more progressive, as the registry notifies the biological parent if the adoptee has searched for them.<sup>82</sup> In this type of registry, the adoption agency employee will reach out to the biological parent to tell them that the adoptee wanted identifying information.<sup>83</sup> At that point, the biological parent can either refuse or agree to the release of information.<sup>84</sup> Either way, the birth parents will now know the adoptee was searching for them.<sup>85</sup> However, in a search and consent registry, a birth parent cannot initiate a search for the adoptee.<sup>86</sup> The adoption registries are crucial for adoptees and biological parents alike, in case the need for contact changes later in the process. Below are several state statutes that show a variety of examples on how states allow adoptees to obtain information through registries.

### **New York's Registry Statute**

In 2008, New York created the Adoption Information Registry that created a form for birthparents to fill out.<sup>87</sup> The Birth Parent Registry gives birth parents the opportunity to give the adoptee information on their 18th birthday.<sup>88</sup> In 2018, the registry created more than 400 matches between birth parents and the adoptee.<sup>89</sup> While birthparents may want to leave the adoption phase

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<sup>79</sup> Id. at 302.

<sup>80</sup> Id.

<sup>81</sup> Id.

<sup>82</sup> Id.

<sup>83</sup> Id.

<sup>84</sup> Id.

<sup>85</sup> Id.

<sup>86</sup> Id.

<sup>87</sup> Access to Adoption Records, *supra* at 53.

<sup>88</sup> Id.

<sup>89</sup> Id.

of their life behind them, it is a public policy necessity for people to know their roots. New York's Birth Parent Registry is a wonderful example of how birth parents can relay important information to their biological children, without interfering in the adoption process. Because the adoptee must be 18 years old to use the registry, there is no concern of biological parents interfering with custody of the child.

### **New Jersey's Registry Statute**

In New Jersey, there are a few options that both the adoptee and the birth parents have when determining the level of contact. "Mutual access to identifying information" is codified by N.J.S.A. § 26:8-40.34.<sup>90</sup> The birth parents of an adoptee are permitted to submit a contact preference form to the State Registrar indicating the level of contact they wish to have with the adopted person.<sup>91</sup> The birth parent may change their contact preference at any time by submitting an updated contact document to the State Registrar.<sup>92</sup> The form is comprehensive, as the State Registrar requires a birth parent to submit a document of contact preference, along with updated family history information, which shall include: medical, cultural, and social history information regarding the birth parent.<sup>93</sup>

There are three ways that a biological parent can choose to be contacted. The document submitted to the State Registrar for contact preference can include direct contact, contact through an intermediary or no contact.<sup>94</sup> If a birth parent chooses the no contact option, the State Registrar will request the birth parent to update family history information every 10 years until the birth

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<sup>90</sup> N.J. STAT. ANN. § 26:8-40.34 (LEXIS 2015).

<sup>91</sup> Id.

<sup>92</sup> Id.

<sup>93</sup> Id. at § 26:8-40.34(b).

<sup>94</sup> Id. at § 26:8-40.34(d)(1)-(3).

parent reaches the age of 40, and every five years thereafter.<sup>95</sup> While the contact form allows the birth parent to fill out as little or as much information as they wish, it is at least something for the adoptee to learn from.<sup>96</sup> The birth parent may redact or change their contact preference at any time relating to the family history information sheet.<sup>97</sup>

### **Alabama's Registry Statute**

In Alabama, once an adult adoptee turns 19 years old, he or she is permitted to petition to the court for the disclosure of identifying information if the birth parent has not previously given consent.<sup>98</sup> Then, the Court gets an intermediary to contact the birth parents to determine if they would consent to the release of identifying information.<sup>99</sup> If the birth parent does consent to the release of identifying information, the court shall order the release of the information.<sup>100</sup> Conversely, if the birth parents are deceased, cannot be found, or do not consent, the court shall weigh the interests and rights of all parties and determine if the identifying information should be released without the consent of the birth parents.<sup>101</sup> The process of obtaining information for adult adoptees in Alabama is balanced to represent the interests of both the adoptee and the biological parents.

Birth records in Alabama may be accessed by adult adoptees over the age of 19, born in Alabama, and who had an original birth certificate removed from their file due to an adoption.<sup>102</sup>

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<sup>95</sup> Id. at § 26:8-40.34(e).

<sup>96</sup> Leigh Kelsey, O'Donnell, Article: The Constitutional Implications of New Jersey's Open Adoption records Law (S.873) and State-Sanctioned Infringement on Birth Parents' Privacy Rights, 13 Rutgers J.L. & Pub. Pol'y 110, 119 (Fall 2015).

<sup>97</sup> Id.

<sup>98</sup> Id.

<sup>99</sup> Id.

<sup>100</sup> Id.

<sup>101</sup> Id.

<sup>102</sup> Id.

The birth parents involved in an adoption may request from the Alabama State Registrar of Vital Statistics a contact preference form that goes along with the original birth certificate.<sup>103</sup> At any point, the birth parent can change their contact preference.<sup>104</sup> Similar to other state statutes, birth parents are given three options for contact preference: (1) he or she would like to be contacted; (2) he or she would prefer to be contacted only through an intermediary; or (3) he or she would prefer not to be contacted at this time but may submit an updated contact preference at a later time.<sup>105</sup>

### **New Hampshire's Registry Statute**

The New Hampshire Vital Records Administration is charged with supplying records to adoptees.<sup>106</sup> Birth parents in New Hampshire may fill out a contact preference and medical form that would be filed with the New Hampshire Vital Records Administration.<sup>107</sup> Moreover, the New Hampshire adoption law states that adopted individuals are permitted to obtain non-identifying social and medical information from the agency that finalized the adoptee's adoption and adoptees may request to search for their birth parents by the agency that finalized the adoption.<sup>108</sup> The agency who finalized the adoption would act as the intermediary for the adoptee during the search process and try to locate the birth parents, if the birth parents are willing to be contacted.<sup>109</sup> With the consent of both parties, identifying information may be released.<sup>110</sup> Any non-identifying social or medical information obtained under this section does not require Court approval.<sup>111</sup>

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<sup>103</sup> Id.

<sup>104</sup> Id.

<sup>105</sup> Ala. Code § 22-9A-12(c)-(d) (LexisNexis 2020).

<sup>106</sup> N.H. REV. STAT. ANN. §170-B:24(I)(a) (LexisNexis 2006).

<sup>107</sup> Id.

<sup>108</sup> Id.

<sup>109</sup> Id.

<sup>110</sup> Id.

<sup>111</sup> Id.



## **B. Who Has Access to Birth Certificates & Medical Record Access**

Adoptees may access their birth certificates in a non-certified copy if the respective state permits adoptees to gain access to such information. Relatively new advancements in the adoption laws across the country have led to varying degrees of open birth certificate laws as there are different cultures, legislatures and norms in that locale. Yet, adoptees are not the only people that can obtain birth certificates. Many times, adoptees have their own children who may want information about who they are and where they come from. Each state's approach to open birth certificates is different, albeit better than requiring the good cause petition to the court.

### **New York Statute: Open Access**

On November 14, 2019, New York Governor, Andrew Cuomo signed NY PUB HEALTH LAW § 4138e.<sup>112</sup> Beginning on January 15, 2020, adopted New Yorkers could apply for their birth certificates.<sup>113</sup> If an adoptee was born in one of the five boroughs of New York City, they are supposed to contact the New York City Department of Health and Mental Hygiene or visit their website for more information.<sup>114</sup> There are certain requirements that must be met to obtain pre-adoption birth certificates.<sup>115</sup> People who can apply are: the adoptee who is over 18 years old; direct line descendent of the adoptee (child, grandchild, great grandchild etc.); lawful representative of the adoptee; or lawful representative of deceased adopted person's direct line descendent.<sup>116</sup> The New York statute gives some flexibility in who can obtain birth certificate information which is perfect in the event the adoptee has passed away. Even if the adoptee has

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<sup>112</sup> NY PUB HEALTH LAW § 4138e (McKinney 2020).

<sup>113</sup> Id.

<sup>114</sup> New York State Department of Health, available at: [https://www.health.ny.gov/vital\\_records/preadoption.htm](https://www.health.ny.gov/vital_records/preadoption.htm) (last visited April 19, 2020).

<sup>115</sup> Id.

<sup>116</sup> Id.

passed away, the open birth certificate law in New York allows their biological descendent to find out important information about their genetic makeup.

The application must be sent in with a valid photo-ID such as: driver's license; state issued nondriver photo-ID; passport; or U.S. military issued, photo-ID.<sup>117</sup> If not from the first group, applicants can send in with their application, two things with their name and address from the following list: utility or telephone bill; letter from a government agency dated within the last six months.<sup>118</sup> The requirement of adequate ID ensures that not just anyone is receiving personal information and people are who they say they are. This not only protects the adoptee, but also protects adoptive parents from prying relatives who want access to personal information. New York's law makes it somewhat "easy" for adoptees or their descendants to obtain vital information. In the past, adoptees would have to petition to the court and show "good cause" to obtain their records. Yet, with this law, New York adoptees are getting personal information about themselves that is rightfully theirs by beginning the process to obtain their original birth certificate and make contact with their birth parents through the mutual consent registry.

### **New York Statute: Medical Information**

New York's newly enacted adoption law allows adoptees proper access to their biological medical records. The legislation was intended to give adopted New Yorkers the same right to their birth records as non-adopted New Yorkers.<sup>119</sup> Section 1, § 4138-E states that by denying adopted New Yorkers access to their birth certificate, it "...may result in such person succumbing to preventable disease, premature death or otherwise unhealthy life, is a violation of that person's

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<sup>117</sup> Id.

<sup>118</sup> Id.

<sup>119</sup> Id.

human rights and is contrary to the tenets of government.”<sup>120</sup> The New York statute, specifically this subsection, highlights the importance of adoptees gaining access to their medical information. While the goal of adoption is to take the responsibility off of the biological family and transfer it to the adoptive parents, the adoptee still has genetic ties to the biological family. Subsection § 4138-E of the New York statute makes it abundantly clear the need for adoptees to have access to their medical and genetic history. For example, if at the time of adoption, the biological mother is 18, she may not have health concerns. However, over time the birth mother may experience health conditions such as diabetes or cancer. As noted, a genetic disease, Huntington’s Disease usually does not appear until later in life. This displays the need for updated medical forms over the years from biological parents to adoptees. Medical information relating to genetics may be vital for an adoptee to learn, as health problems can be genetic. The only way an adoptee could find out such information is if they had the opportunity to view their birth certificate and obtain copies of medical records from their biological families.

New York is now the tenth state in the U.S. to pass “unrestricted open birth records law.”<sup>121</sup> Upon opening sealed original birth certificates, adoptees can now learn about their biological family’s medical history which can help adoptees and their own children determine treatment and prevention of health conditions, specifically genetic diseases.<sup>122</sup> While the birth certificate may only give maternal and paternal names, it can lead to finding life changing, or life-saving, medical information.<sup>123</sup> Medical information is vitally important for adoptees because without it, it is hard for adoptees and doctors to determine potential genetic conditions such as heart disease,

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<sup>120</sup> Id. at S3419, § 4138E.

<sup>121</sup> Id.

<sup>122</sup> Id.

<sup>123</sup> Id.

autoimmune disease or mental illness.<sup>124</sup> Discovering important medical facts about oneself may alter how they live their lives. Without access to medical records, an adoptee may go their whole life without knowing this medical information that could have saved them time, money, agony, mental anguish, and even their life.

### **New Jersey Statute: Open Access**

Like New York, New Jersey has a statute governing open birth certificate records. Original birth certificates were to be sealed by statute in November 1940.<sup>125</sup> However, on May 27, 2014, New Jersey Governor, Chris Christie, signed legislation that would allow adult adoptees to obtain a non-certified copy of their Original Birth Certificate.<sup>126</sup> The statute permitted adoptees to receive copies of their birth certificate beginning in January 2017.<sup>127</sup>

The birth certificate is not open to public access under the New Jersey law.<sup>128</sup> New Jersey adoptive parents and adoptees; or descendants; siblings or spouses may obtain a long-form birth certificate from the State Registrar.<sup>129</sup> Governor Christie found that it would no longer be in the best interest of the adoptee to seek appeal to the Court to obtain their birth records.<sup>130</sup> While Christie felt that birth parents should not be required to give their complete medical history, medical records sought by adult adoptees is imperative in determining their genetic background.<sup>131</sup>

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<sup>124</sup> Id.

<sup>125</sup> Adoptee/Birth parent FAQs on changes to vital records law, 2017, available at: <https://www.state.nj.us/health/vital/adoption/vital-record-law-changes-faqs/> (last visited April 20, 2020).

<sup>126</sup> Id.

<sup>127</sup> Id.

<sup>128</sup> Id.

<sup>129</sup> Leigh Kelsey O'Donnell, *supra* at 112.

<sup>130</sup> Id. at 117.

<sup>131</sup> Id. at 118.

It is possible that the adoptee may infringe upon their biological parents' rights.<sup>132</sup> An uncertified long-form birth certificate is the "...most readily accessible—and potentially, uncensored—source of information available to the adult adoptees."<sup>133</sup> These long-form birth certificates can only be used for informational purposes because it is not a legally enforceable document.<sup>134</sup> Unless the State Registrar is notified otherwise, the office may provide a fully intact long-form birth certificate to the authorized requesters containing the original information.<sup>135</sup> Essentially, this means that an adoptee or their descendants would be privy to information on the birth certificate without anything redacted. If the birth parent wants their identity to remain unknown, it is up to them to contact the State Register to ensure that the adoptee cannot find out personal information and make contact.

#### **New Jersey Statute: Medical Information**

It appears that the New Jersey law tries to strike a balance: give adoptees pertinent information while protecting the privacy of birth parents. While getting updates on a family history report every ten years is better than nothing, the New Jersey statute is lacking in this regard. Even though the statute requires birth parents who select "no contact" to update the list every five years once they turn 40 years old, it is not enough.<sup>136</sup> It is good that the state realized once people reach age 40 years-old they may contract certain diseases or hereditary illnesses may pop up. However, every five or ten years is too infrequent as more medical conditions come out as people age. Without medical information, the adoptee and their descendants in the future will not have a warning for potential health concerns. For example, if a birth parent is 18 when they give up their

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<sup>132</sup> Id. at 120.

<sup>133</sup> Id. at 119.

<sup>134</sup> Id.

<sup>135</sup> Id. at 120.

<sup>136</sup> N.J. STAT. ANN. § 26:8-40.34(e).

child, they would only have to update the family history twice before they turned 40. This appears to be unfair to the adoptive parents and the adoptee because health issues may appear in the birth parents before they get older, requiring more frequent updates.

Even if the birth parent does not want the adoptee to contact them, the birth parents should be required to fill out medical information sheets regularly, as this could help save the lives of many people. Open birth certificate laws are also advantageous to states, as people who need medical care for a genetic disease could get medical care before it is too late. If the adoptee or their descendants do not get information from the birth parent, medical emergencies may become commonplace. Conversely, if the statute required more frequent updates from the birth parent, these issues may be avoided.

### **Alabama Statute: Open Access**

Like New York and New Jersey, Alabama has their version of an open birth certificate law. In the Alabama code, the State Department of Human Services "...shall furnish, upon request, to the petitioners, natural parents or an adoptee 19 years of age or order, nonidentifying information which shall be limited to the following:

- (1) Health and medical histories of the adoptee's natural parents;
- (2) The health and medical history of the adoptee;
- (3) The adoptee's general family background, including ancestral information, without name references or geographical designations;
- (4) Physical descriptions;
- (5) The length of time the adoptee was in the care and custody of one other than the petitioner; and
- (6) Circumstances under which child comes to be placed for adoption.<sup>137</sup>

This law on mutual access to identifying information only releases such information if either birth parent has given consent in writing for such disclosure.<sup>138</sup> This subsection also states that

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<sup>137</sup> Ala. Code § 26-10A-31(g)(1)-(6) (LexisNexis 2020).

<sup>138</sup> Access to Adoption Records, *supra*, at 7.

nonidentifying medical information is given, showing the importance of obtaining genetic medical information.

In Alabama, only the person on the birth certificate may request a copy, (no other family member).<sup>139</sup> The individual must also be 19 years or older; the person must have been born in Alabama; and the person must have had an original birth certificate removed from the files due to an adoption.<sup>140</sup> While this law does allow adoptees to gain access to their original birth certificate, it would be best for Alabama to allow other people connected to the adoptee to obtain birth records. If the adoptee passes away, their direct descendants will not be able to access important information about familial ties and biological factors that may impact their life.

#### **Alaska Statute: Open Access**

Alaska is among the ten states that permit access to original birth certificates. In Alaska, adoption files and the identity of birth parents is to remain confidential until the adoptee is 18 years old.<sup>141</sup> Upon the adoptee turning 18 years old, he or she may request their original birth certificate from the Bureau of Vital Statistics.<sup>142</sup> In Alaska, access to original birth certificates by the adoptees over 18 years old allows the State Registrar to provide the person with an uncertified copy of the person's original birth certificate and any change in the biological parent's name or address attached to the certificate.<sup>143</sup>

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<sup>139</sup> Alabama Public Health, Adoptee Seeking Original Birth Information, August 17, 2017, available at: <https://www.alabamapublichealth.gov/vitalrecords/adoption-information.html>, (last visited June 25, 2020).

<sup>140</sup> Id.

<sup>141</sup> About Adoption, available at: <http://dhss.alaska.gov/dph/wcfh/Pages/informedconsent/adoption/default.aspx>, June 26, 2020, (last visited June 25, 2020).

<sup>142</sup> Id.

<sup>143</sup> ALASKA STAT. § 18.50.500(a) (LexisNexis 2020).

Moreover, the State Registrar is not permitted to disclose the name and address of a biological parent “...except as required under (a) of this section...”<sup>144</sup> Further, identifying information can be accessed by both the birth parent and the adoptee over 18 years old.<sup>145</sup> This provision of the Alaska statute is helpful, as it allows parties involved and connected biologically to have access to important information. Requiring the adoptee to be at least 18 years old upon obtaining information ensures that there is no threat of the biological parents seeking custody of the child. Also, at 18 years old, the adoptee may desire to learn about their biological background for future reference.

Furthermore, there are a lot of characteristics that adoptees can obtain about their biological parents, even if they are non-identifying characteristics. The State Registrar shall at the request of the adoptive parent or adoptee over 18 years old, release the following information regarding a biological parent named on the original birth certificate such as:

- (1) the age of the biological parent on the day the adopted person was born;
- (2) the heritage of the biological parent, to include
  - (A) national origin;
  - (B) ethnic background; and
  - (C) tribal membership;
- (3) the medical history of the biological parent and of blood relatives of the biological parent;
- (4) the number of years of school completed by the biological parent by the day the adopted person was born;
- (5) a physical description of the biological parent on the day the adopted person was born, including height, weight, and color of hair, eyes, and skin;
- (6) the existence of other children of the biological parent;
- (7) whether the biological parent was alive at the time of adoption;
- (8) the religion of the biological parent; and
- (9) other information provided by the biological parent for disclosure to the child, which may include such items as

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<sup>144</sup> Id. at § 18.50.500(b).

<sup>145</sup> Id.



photographs, letters, and a statement explaining the reasons for the adoption.<sup>146</sup>

The information that adoptive parents or adoptees over 18 years old can obtain through the State Registrar's adoption records is quite expansive. However, the statute remains unclear whether or not in Alaska, a birth parent can simply refuse to give basic medical information at the time of adoption. Subsection 18.50.510(a)(3) gives adoptive parents and adoptees over 18 years old the opportunity to find out vital medical information about the biological parent and the biological family if need be.<sup>147</sup>

### **Alaska Statute: Medical Information**

The Alaska statute allows adoptees to gain access to their biological family's medical records.<sup>148</sup> The Alaska medical record statute not only grants adoptees access to their biological parents' information, but also their biological family members' information.<sup>149</sup> The subsection states:

- (a) The state registrar shall, at the request of an adoptive parent or of an adopted person 18 years of age or older, release the following information regarding a biological parent named on the original birth certificate of the adopted person if available from the registrar's adoption records: (3) the medical history of the biological parent and of blood relatives of the biological parent.<sup>150</sup>

While Alaska's medical information subsection may cover a lot of information, and could be viewed as invasive to some, this is better than leaving an adoptee in the dark about their genetic makeup and biological family's health history.

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<sup>146</sup> Id. § 18.50.510(a)(1)-(9).

<sup>147</sup> Id. § 18.50.510(a)(3).

<sup>148</sup> Id. § 18.50.510(a)(3).

<sup>149</sup> Id.

<sup>150</sup> Id.

While birth parents might feel that they gave up their child for adoption to sever ties, and do not want to deal with giving personal medical information, adoptees should have access to their medical background. As an adoptee, these children and their future children should have access to important medical information. Including medical information in an adoption record allows adoptees to have something to go off of when they go to the doctor and are asked medical history. While the Alaska statute may appear intrusive, it is better to have an overinclusive law that biological parents can opt out of, than an underinclusive law that does not provide enough information to adoptees. While people may not think adoptees over 18 need medical information as they are still young, it is important for adoptees to plan in advance if there are genetic diseases or mental illness in their family medical history.

#### **New Hampshire Statute: Open Access**

New Hampshire is among the states that permit open birth records in the United States. On January 1, 2005, the New Hampshire legislature permitted anyone over the age of 18 to obtain a non-certified copy of their birth certificate if the individual was adopted.<sup>151</sup> New Hampshire permits certain information to be obtained by the parties involved, even if the information is non-identifying. By making this information non-identifying, the adoptee is given their family medical history that can help save their life in the future. Additionally, because it is non-identifying, the biological parents' privacy remains intact, while still sharing important information with their biological child.

The New Hampshire adoption law gives for adoptees and biological parents who want to contact each other a way for this to be accomplished, while the state serves as the intermediary.

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<sup>151</sup> New Hampshire Department of Health and Human Services, *Adoptees & Birth Family Members*, available at: <https://www.dhhs.nh.gov/dcyf/adoption/adoptees.htm>, (last visited: June 30, 2020).

While some may state that birth parent searches are unfair to the biological family's privacy, if a biological parent did not want contact with their adopted child, they could simply opt out of contact.<sup>152</sup> However, having the option to be contact is easily facilitated through this search process.

New Hampshire allows for the release of both non-identifying and identifying information in certain circumstances. Requests for non-identifying social or medical information may be made by "...an adoptee over the age of 18; a parent of an adoptee under the age of 18; or a birth parent of an adoptee."<sup>153</sup> When any of the people permitted to request information submit a request for non-identifying social or medical information, the department or agency shall disclose information pertaining to the adoptee, the birth parent, or the blood relatives.<sup>154</sup> The statute requires the department or agency to redact any information in the social or medical background that could potentially identify the individual.<sup>155</sup>

Furthermore, the New Hampshire adoption law permits the release of identifying information if the parties mutually agree to the release.<sup>156</sup> The New Hampshire law specifies who may sign a release for identifying information.<sup>157</sup> The statute allows the following people to sign a written release authorizing the department of license child-placing agency to disclose identifying information about an adoptee, a birth parent, or a blood relative.<sup>158</sup>

It is interesting to see that the New Hampshire law nullifies the release upon the adoptee reaching 18 years old if it was authorized by the adoptive parent. This allows for the adoptive

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<sup>152</sup> Id.

<sup>153</sup> N.H. REV. STAT. ANN. §170-B:24(I)(a) (LexisNexis 2006).

<sup>154</sup> Id. at § 170-B:24(I)(b).

<sup>155</sup> Id.

<sup>156</sup> Id. at § 170-B:24(II).

<sup>157</sup> Id.

<sup>158</sup> Id. at § 170-B:24(II)(a)(1)-(3).

parents to receive or give information as they see fit but nullifying the authorization upon the adoptee turning 18 years old allows the adoptee to make their own decisions regarding the sharing of information upon reaching the age of majority.

Further, in subsection (3) of the New Hampshire statute, it is reassuring that the birth parent may change their mind regarding the release at any time. New Hampshire's statute requires an authorization form from both parents. Requiring a release from each birth parent ensures that the parents are treated as individuals and their specific needs are met. For example, a birth father may choose to be contacted by the adoptee, while the birth mother may opt for no contact or vice versa. This feature allows each parent to have separate decisions based on what fits their life best, showing there is not a 'one size fits all' approach to adoption.

The New Hampshire statute requires the department or licensed-child placing agency to retain a copy of the release.<sup>159</sup> It is then up to the department or agency to file the copy with the court where the adoption petition was filed.<sup>160</sup> The clause requiring a copy of the release to be sent to the Court is a mechanism protecting the parties from making any claims that they did not want or allow such a release. Having a copy of the release on file with the Court is not only a good record keeping device, but also a way to prevent lawsuits in the future.

The New Hampshire statute goes even further to protect the parties, and keep the process airtight by requiring authorization of the parties before identifying information is released.<sup>161</sup> When there has been a previously signed release for identifying information, and it has not previously been revoked, the department or agency shall *attempt* to contact the person who signed

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<sup>159</sup> Id. at § 170-B:24(II)(3)(c).

<sup>160</sup> Id.

<sup>161</sup> Id. at § 170-B:24(II)(3)(e).

the release to reaffirm the person’s desire to be contacted.<sup>162</sup> By contacting the individual who originally signed the release before actually releasing identifying information, individuals can revoke their permission at the last minute if they change their mind. It is likely that this was added to the statute so if information was requested and that individual felt differently at the time the request was made, the individual have the opportunity to change their mind before identifying information was shared. However, some people may assert that this added step gives people a “way out” which may allow for fewer successful releases of identifying information. Beforehand, it is better for someone to change their mind on the release of identifying information, preventing future lawsuits.

This specific subsection of the New Hampshire adoption code appears to be quite comprehensive. Subsection (f) of the New Hampshire statute discusses the involvement of the department or agency if there is a request for identifying information where no release has been signed or the release has previously been revoked.<sup>163</sup> Upon looking at their records, the department or agency can try to contact the person that someone is trying to contact to see if they want to release their identifying information.<sup>164</sup> If the parties agree to the release of information, the department or agency is to release it and court approval is required.<sup>165</sup> It is important that this statute mentions that Court approval is not required. In the past, the release of adoption information had to be approved by courts for “good cause.” By allowing a department or agency to have control over this issue, this helps speed up the process and takes the burden away from courts who already have full dockets. The Court becomes involved in the process is when the parties do not agree, if

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<sup>162</sup> Id.

<sup>163</sup> Id. at § 170-B:24(II)(3)(f).

<sup>164</sup> Id.

<sup>165</sup> Id.

the parties cannot be contacted, or the department or agency is concerned for the safety of releasing such identifying information.<sup>166</sup>

Even though the original birth certificate in New Hampshire can only be viewed through a “good cause” order by the court, New Hampshire’s adoption law allows the adoptee to get social and medical information about their biological parent(s) and blood family.

### **New Hampshire Statute: Medical Information**

The New Hampshire adoption statute permits adoptees to request non-identifying social or medical information about their biological family once they are over 18 years old.<sup>167</sup> Non-identifying information may also be disclosed to adoptive parents if the child is under 18 years old, or to the birth parents.<sup>168</sup> Allowing adoptive parents before the child is 18 years old access to the adoptee’s biological family’s medical records ensures that if there is a genetic condition to be aware of, the adoptive parents can get treatment for the child. For example, if an adoptee sees that their biological parent had a history of drug use or alcohol abuse, the adoptee could be on notice for potential substance abuse issues in the future. Moreover, if the adoptee or their adoptive parents discover that the biological family had a history of certain cancers, or a genetic disorder, the adoptee and their parents may be able to prepare for screening, monitoring and prevention of certain diseases. By making this information non-identifying, the adoptee is given their family medical history that can help save their life in the future. Additionally, because it is non-identifying, the biological parents’ privacy remains intact, while still sharing important medical and social issues with their biological child. It is also the duty of the agency to delete identifying

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<sup>166</sup> Access to Adoption Records, *supra*, at 48.

<sup>167</sup> N.H. REV. STAT. ANN. § 170-B:24(I)(a).

<sup>168</sup> Id.

information.<sup>169</sup> “The department or the agency shall delete any information from the health history or background which would tend to be identifying. Court approval is not required for information disclosed under this paragraph.”<sup>170</sup> Allowing open access to medical information of biological parents and their blood relatives gives adoptees in New Hampshire the information they deserve that can help prevent or mitigate the impact diseases that are familial in nature.

### III. **Solution: Open Birth Record Statutes Granting Medical Records Should be Enacted Across the Country**

Overall, the importance of states across the country adopting open birth certificate laws providing non-identifying medical records is at the forefront of creating more favorable outcomes in adoptions. While some people may claim that making birth certificates accessible would defeat the whole purpose of adoption, it is important to note that redacting information, while still learning invaluable details about their genetics is vitally important for adoptees. Medical and genetic information is at the forefront of concern when discussing voluntary adoption. Medical information is crucial for the health and wellbeing of adoptees, even if the adoptee is not granted the identity of their biological parents. While open birth certificate laws containing contact information may be helpful, at the very least, states should adopt a birth certificate law that permits full access to medical records with identifying information redacted. Essentially, the need for more open records allows adoptees to gain a sense of identity as well as health status to shape their future. Various states have existing medical record laws for adoptees to gain valuable information. Even if fully open birth records are ideal, many states would not enact such a sweeping piece of

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<sup>169</sup> Id. at § 170-B:24(I)(b).

<sup>170</sup> Id.

legislation. Therefore, permitting adoptees to gain insight on their family medical background is vital.

Medical information is the touchstone to success for adoptees. In the past, adoptions were closed and information was fully sealed away so adoptive parents were not shamed for infertility and biological parents were not shamed for having a child out of wedlock, among other reasons. However, with social revolution over the years, the stigma surrounding adoption has diminished, shedding light on the importance of adoptees gaining insight on their medical history.

With advances in science and medicine, it is important for adoptees to gain access to medical information that could shape their future. Not having access to any medical records from one's biological family could be detrimental later in life. Further, there are some diseases that are genetic in nature. If adoptive parents find out about genetic diseases early in the adoptee's life, there may be better diagnosis and treatment outcomes.

The need for open medical records stems from the need to treat conditions that may exist in a family tree. For example, if a disease is genetic in nature, there are treatments or life management ways that can help someone with a genetic disease if they begin treatment early in life.<sup>171</sup> If an individual has a genetic condition that disrupts metabolic enzymes, treatments may include enzyme replacement that the individual is missing, or dietary changes.<sup>172</sup> However, if one does not know that they may have a predisposition to a certain genetic disorder, they will not get medical testing and treatment. With access to biological family medical records, an adoptee is on notice about potential health concerns. Further, if someone has a genetic heart condition, certain treatment

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<sup>171</sup> How are Genetic Conditions Treated or Managed?, *Genetics Home Reference*, July 2020, available at: <https://ghr.nlm.nih.gov/primer/consult/treatment>, (last visited: August 2, 2020).

<sup>172</sup> Id.



such as medication or surgery may be utilized to help the patient.<sup>173</sup> Moreover, in other genetic diseases like sickle cell disease, a patient may receive a bone marrow transplant to allow formation of normal blood cells.<sup>174</sup> Certain medical reports state that if done early in life the bone marrow transplant may help prevent pain and other complications in the future.<sup>175</sup> Also, genetic patterns may cause potential cancers in the future.<sup>176</sup> A common example of familial genetic mutations is with the BRCA1 and BRCA2 genes that may lead to breast cancer.<sup>177</sup> If someone was on notice of a genetic predisposition to something, they would be more likely to get more frequent cancer screening, or even go as far as removing tissue that could become cancerous later in life.<sup>178</sup> Huntington's Disease is a rare neurological condition that causes a "progressive degeneration of nerve cells in the brain" which often leads to a severe impact on one's movement, cognition and psychiatric illnesses.<sup>179</sup> While Huntington's Disease can develop at any time, it often shows up later in life (usually in one's 30s and 40s).<sup>180</sup> The disease causes an eventual decline in one's health, however, medications to manage symptoms may be very helpful for individuals with the disease early on.<sup>181</sup> There are many genetic conditions and diseases that people would often not know about, or get tested for, if they did not know about them. Therefore, it is wise of states to enact

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<sup>173</sup> Id.

<sup>174</sup> Id.

<sup>175</sup> Id.

<sup>176</sup> Id.

<sup>177</sup> Id.

<sup>178</sup> Id.

<sup>179</sup> Huntington's Disease, *Mayo Clinic*, available at: <https://www.mayoclinic.org/diseases-conditions/huntingtons-disease/symptoms-causes/syc-20356117#:~:text=Huntington's%20disease%20is%20caused%20by,gene%20to%20develop%20the%20disorder>, (last visited August 2, 2020).

<sup>180</sup> Id.

<sup>181</sup> Id.

legislation that allows adoptees to access important medical information from their biological families even if no other contact between the parties is sought.

While adoptees could have petitioned to the court for “good cause” in the past, that is not enough. Requiring adoptees to petition to the court for “good cause” to obtain their birth records creates a heavy burden on an adoptee who likely already has a mental or physical need for said records. Therefore, it would be best for adoptees across the country if the “good cause” petition was no longer required. The “good cause” petition wastes a lot of time, money and judicial resources when there are better options available.

Adoption registries help adoptees get in contact with their birth families if both parties consent. The New York adoption registry created in 2008 allows adoptees to obtain information upon turning 18 years old. It is important that the law requires the adoptee to reach the age of maturity before they can find out information. New York’s approach to Adoption Registries should be a model to other states looking to enact an adoption registry statute. By making adoptees wait until they are 18 years old to sign up for the registry, this eliminates any potential parenting concerns. Once the adoptee turns 18 years old, the adoptive parents should not feel threatened that the biological family would try to come back and take on the parenting role for the child.

New Jersey has a model statute for the contact preferences that can be enacted by other states. In New Jersey, the statute permits no contact, contact through an intermediary or direct contact. These choices allow birth parents to have contact with their child if they choose to, while still feeling protected if they choose the intermediary option. Further, the contact preference requirement in New Jersey not only reveals if and how the birth parent wants to be contact, but it also mentions medical, cultural, and social history information regarding the birth parent. Therefore, requiring a parent to fill out a contact preference would let adoptees know if they have

any chance of getting important medical information. The New Jersey statute is a model example of what other states should enact because even if no contact is selected, the biological parent must fill out a medical history form. N.J.S.A. § 26:8-40.34(e) requires birth parents to fill out information forms every 10 years until they turn 40 and then every five years after. Essentially, the New Jersey law is a great start to ensuring adoptees get access to medical information they desire. However, a model statute across the country to obtain medical information should require that even if the birth parent says they want no contact, they should still be required to submit important medical information. In the 21st century, advances in medicine could allow an adoptee to prevent or treat a genetic condition they otherwise would not have had access to. This provision should be widely accepted across the country because as people age, health conditions appear. Adoptees would then be able to learn about potential medical conditions or illnesses in their future, as it is unlikely a birth mother who gave her child up at 18 years old would have the same health concerns as they age.

Also, Alabama has a superb contact preference statute; allowing birth parents to select contact, contact through an intermediary or no contact. Yet, it is wise that Alabama allows the contact preference sheet to be updated at any time, providing necessary flexibility to the parties involved.

New York's statute on who may access an open birth certificate should be a model statute for other states to adopt. In New York, people who can apply are: the adoptee who is over 18 years old; a direct line descendent of the adoptee (child, grandchild, great grandchild etc.); lawful representative of the adoptee; or lawful representative of deceased adopted person's direct line descendent. It is important that not only the adoptee may gain access to the birth records. New Jersey's statute also allows decedents; spouses; or siblings of the adoptee access to the adoptees

birth certificate. It is vitally important for people close to the adoptee to have access to birth records. While it is good that not just anyone is allowed to access personal records, if the adoptee passes away, their family members should be granted access to important birth records that could help them and their future relatives.

Conversely, the Alabama statute on who may have access to birth records needs to be amended. In Alabama, only the adoptee may have access to their birth records. While some people may think it is invasive for individuals other than the adoptee to obtain birth records, if the adoptee falls ill and needs medical information but is so incapacitated that they cannot obtain records for themselves, no one would be able to get birth records. Therefore, it would behoove Alabama to amend their statute to include people close to the adoptee to gain access to medical information. If a birth parent does not want the adoptee to find out their personal contact information, at the very least, birth parents should be required to redact contact information, while still providing medical records to the adoptee. Further, if an adoptee in Alabama does not care to seek medical records, but their biological child would like family medical history, they should be granted access.

Without some sort of open birth certificate law that grants access to medical information, adoptees are left in the dark about potential health concerns they could face in the future. While no state law mentioned is absolutely perfect on their own, it appears that most states should enact an adoption law similar to the New Hampshire statute as it is quite comprehensive in a few areas.

Obtaining medical information, even without other contact from the birth family is needed for adoptees. While society has accepted adoptions more widely, allowing access to medical information can shape the medical future of adoptees and their biological offspring. Medical advances over time have allowed people to get preventative screening and treatment for preventable or genetic diseases. If adoptees are unaware of a health pattern in their biological

family medical history, their doctor cannot know what routine screenings, signs and symptoms to look out for. New Jersey's medical record statute for adoptees requires birth parents to update medical records every ten years until they turn 40 years old. After 40 years old, the medical form is to be updated every five years. This statute is effective because it requires a medical record form to be filled out even if the birth parent selects "no contact" in their contact preference. While updates to medical history every five to ten years is good, New Jersey should require birth parents with medical issues arising to fill out and update medical forms annually so adoptees can be kept abreast of any potential concerns.

Furthermore, the Alabama medical record subsection of their adoption statute allows access to medical records of the birth parents and blood relatives as well. While asking for so much medical information may appear intrusive, a biological parent's own parents or siblings may have heredity conditions that the adoptee should be aware of. The perfect solution would be a blended statute of New Jersey and Alabama's medical record form. However, the best version of the statute should require biological families with serious and/or potentially genetic health conditions to update medical forms more often than every five years. Country wide adoption statutes should be enacted so no adoptee has to fear the unknown in their medical record. With medical advances, no one should be limited in their access to life changing or lifesaving medical care.

The prevailing need for medical information on the part of adoptees should outweigh any other concerns presented. Some scholars note that while the adoptee may have concerns regarding their genetic information and family medical history, the biological family's privacy rights should be honored. While both the adoptee and biological parents/family has their own set of rights, adoption statutes should allow adoptees to receive important medical information that could shape their future health decisions, without finding out the details of their biological family's identity.

While no law is perfect, it would behoove all states across the country to adopt some form of an open birth certificate law. Adoptees should not have to spend exorbitant amounts of money to petition to the court to show “good cause” for obtaining information. Further, open birth certificate laws should be preferred as this removes a heavy burden on the court’s already busy docket. Over time as adoption becomes more accepted, and genetic testing, medical screening and advances in medicine have become commonplace, locales across the United States should adopt some version of an open birth certificate statute to allow adoptees access to information they are rightfully entitled to.