§ 374. Authority to place out or board out children. 1. An authorized agency is hereby empowered and permitted to place out and board out children.

1-a. In any agreement between an authorized agency and foster parents with whom a child or children are to be placed or boarded, there shall be contained therein the following language: "It is duly acknowledged by the parties hereto that pursuant to the law of the state of New York, a foster parent shall have preference in any proceedings to adopt the child subject to this agreement upon such child having been in the custody of such foster parent for a period in excess of twelve months".

2. No person, agency, association, corporation, institution, society or other organization except an authorized agency shall place out or board out any child but the provisions of this section shall not restrict or limit the right of a parent, legal guardian or relative within the second degree to place out or board out a child.

3. Except as hereinafter provided no court, public board, commission or official shall place out or board out a child in a family not residing within this state.

(a) A commissioner of public welfare or a city public welfare officer authorized, pursuant to the provisions of section three hundred ninety-eight of the social welfare law, to accept the surrender of a child, may place out a child for the purpose of adoption in a family not residing within this state. No placement of a child in a family not residing within this state shall be made unless an agreement for such placement shall have been reached between the public welfare official making such placement and the appropriate welfare or other public official on a state or local level in the state where the family resides who is authorized by law to supervise children in institutional or foster care homes. Such agreement shall include provision for the supervision of the family and the child during the period preceding a final adoption.

(b) A commissioner of public welfare or a city public welfare officer authorized, pursuant to the provisions of section three hundred ninety-eight of the social welfare law, to place children in family

homes, may board out a child in a family not residing within this state. No child may be boarded out in a family not residing within this state unless an agreement for such placement shall have been reached between the public welfare official making such placement and the appropriate welfare or other public official on a state or local level in the state where the family resides who is authorized by law to supervise children in institutional or foster care homes. Such agreement shall include provision for the supervision of the family and the child during the period while the child is boarded out.

4. (a) No hospital or lying-in asylum whether incorporated or unincorporated where women or girls may be received, cared for or treated during pregnancy or during or after delivery except as hereinafter provided and no person licensed to carry on like work under the provisions of article twenty-eight of the public health law shall be an authorized agency for placing out or boarding out children or place out any child in a foster home whether for adoption or otherwise either directly or indirectly or as agent or representative of the mother or parents of such child.

(b) Every such hospital and licensed person shall forthwith report to the county or city officer or board charged by law with the care of destitute children away from their homes where such hospital is located or where such child is cared for by such licensed person any child abandoned or left in the care or custody of such hospital or licensed person provided, however, that no such report except as provided in section three hundred seventy-two shall be required to be made by a hospital which is also an authorized agency.

(c) Such officer or board shall receive and care for such child as a destitute or abandoned child and may bring the case of such child before the family court in the county or city for adjudication.

(d) The expense of caring for such child as a public charge shall be paid as provided by this chapter.

5. Nothing contained in this section shall deprive any hospital of any right or power conferred upon it by its charter or act of incorporation or specified in its certificate of incorporation.

6. (a) An authorized agency, as defined in paragraphs (a) and (c) of subdivision ten of section three hundred seventy-one of this title, may charge or accept a fee or other compensation to or from a person or persons with whom it has placed out a child, for the reasonable and necessary expenses of such placement; and no agency, association, corporation, institution, society or organization, except such an authorized agency, and no person may or shall request, accept or receive any compensation or thing of value, directly or indirectly, in connection with the placing out or adoption of a child or for assisting a birth parent, relative or guardian of a child in arranging for the placement of the child for the purpose of adoption; and no person may or shall pay or give to any person or to any agency, association, corporation, institution, society or organization, except such an authorized agency, any compensation or thing of value in connection with the placing out or adoption of a child or for assisting a birth parent, relative or guardian of a child in arranging for the placement of the child for the purpose of adoption. The prohibition set forth in this section applies to any adoptive placement activity involving a child born in New York state or brought into this state or involving a New York resident seeking to bring a child into New York state for the purpose of adoption.

(b) This subdivision shall not be construed to prevent the payment of salaries or other compensation by an authorized agency to the officers or employees thereof; nor shall it be construed to prevent the payment by a person with whom a child has been placed out of reasonable and actual medical fees or hospital charges for services rendered in connection with the birth of such child or of other necessary expenses incurred by the birth mother in connection with or as a result of such birth mother's pregnancy or the birth of the child, or of reasonable and actual nursing, medical or hospital fees for the care of such child, if such payment is made to the physician, nurse or hospital who or which rendered the services or to the birth mother of the child, or to prevent the receipt of such payment by such physician, nurse, hospital or birth mother. This subdivision shall not be construed to prevent the payment by an adoptive parent, as defined in section one hundred nine of the domestic relations law, of the birth mother's reasonable and actual expenses for housing, maternity clothing, clothing for the child and

transportation for a reasonable period not to exceed one hundred eighty days prior to the birth and the later of forty-five days after the birth or forty-five days after the parental consent to the adoption, unless a court determines, in writing, that circumstances exist which require the payment of the birth mother's expenses beyond the time periods stated in this sentence. This subdivision shall not be construed to prevent the payment by an adoptive parent, as defined in section one hundred nine of the domestic relations law, of reasonable and actual legal fees charged for consultation and legal advice, preparation of papers and representation and other legal services rendered in connection with an adoption proceeding or of necessary disbursements incurred for or in an adoption proceeding. No attorney or law firm shall serve as the attorney for, or provide any legal services to both the birth parent and adoptive parent in regard to the placing out of a child for adoption or in an adoption proceeding. No attorney or law firm shall serve as the attorney for, or provide any legal services to, both an authorized agency and adoptive parent or both an authorized agency and birth parent where the authorized agency provides adoption services to such birth parent or adoptive parent, where the authorized agency provides foster care for the child, or where the authorized agency is directly or indirectly involved in the placing out of such child for adoption.

7. After receipt of notice from the state commissioner of health or the department of health of the city of New York, as the case may be, that an application has been received by such commissioner or department for a license or for the renewal of a license to conduct a maternity hospital or lying-in asylum, pursuant to the provisions of article twenty-eight of the public health law, the department shall, after notice to the applicant and opportunity for him to be heard, certify in writing to such commissioner or city department that the department has reasonable cause to believe that the applicant is violating or has violated the provisions of this section, if such be the case. The department shall so certify within thirty days of the date it received notice, or within such additional period, not to exceed thirty days, as the department may request in writing addressed to the commissioner or administration giving notice.