

DSWD OPINION NO. 05 S. 2024DRN: LS-L-LO-24-01-03484-C**MEMORANDUM FOR THE SECRETARY**

THROUGH : ATTY. HURJAE S. LUBAG, RPm
Head Executive Assistant

**FROM : THE ASSISTANT SECRETARY FOR GENERAL
ADMINISTRATION AND SUPPORT SERVICES GROUP
and CONCURRENT OFFICER-IN-CHARGE, LEGAL
SERVICE**

**SUBJECT : REGULATORY POWER TO RECOMMEND SWDAs BY
NATIONAL AUTHORITY FOR CHILD CARE**

DATE : 08 JANUARY 2024

This is in reference to the meeting held on 05 January 2024 attended by the Secretary, the Undersecretary for General Administration and Support Services Group (GASSG), the Undersecretary for Standards Capacity Building Group, and Assistant Secretary for GASSG & Concurrent Officer-in-Charge, Legal Service regarding the issue on whether the National Authority for Child Care (NACC) has regulatory power pertaining to the accreditation of Social Welfare and Development Agencies (SWDAs) involved in **alternative child care and adoption**.

The LS has already issued an opinion addressed to Dir. Megan Therese Y. Manahan per Memorandum dated 14 December 2023 stating that the regulatory functions of the DSWD such as accreditation of Child Caring Agencies (CCAs) and Child Placing Agencies (CPAs) remains with the Department.

During the said meeting, LS was tasked to take a second look on the law and its implementing rules and determine the role of NACC with respect to the accreditation by DSWD of SWDAs with programs pertaining to alternative child care and adoption.

LS Comment

The core of this discussion centers on Sections 5 and 6, Article II of Republic Act No. 11642 or the *Domestic Administrative Adoption and Alternative Child Care Act*, and we quote:

“Section 5. National Authority for Child Care (NACC). – The Inter-Country Adoption Board (ICAB) is hereby reorganized to a one-step quasi-judicial agency on alternative child care, known as the National Authority for Child Care (NACC), attached to the DSWD.

All duties, functions, and responsibilities of the ICAB, the DSWD, and those of other government agencies relating to

alternative child care and adoption are hereby transferred to the NACC.

xxxx". (emphasis and ours)

Section 6. Jurisdiction of the NACC. – The NACC shall have the original and exclusive jurisdiction over all matters pertaining to alternative child care, including declaring a child legally available for adoption; domestic administrative adoption; adult adoption; foster care under Republic Act No. 10165, otherwise known as the "Foster Care Act of 2012"; adoptions under Republic Act No. 11222, otherwise known as the "Simulated Birth Rectification Act"; and inter-country adoption under Republic Act No. 8043, otherwise known as the "Inter-Country Adoption Act of 1995". The NACC shall also have the authority to impose penalties in case of any violation of this Act." (emphasis and ours)

To determine what duties and functions of the Inter-Country Adoption Board (ICAB) and DSWD have been transferred to NACC, we look into the mandates of these entities.

ICAB Duties and Functions

Section 4 of RA No. 8043 or the *Inter-Country Adoption Board (ICAB) Act of 1995* provides for the creation of said Board and its mandate. In relation to the issue at hand, we quote the pertinent duties and functions of said Board under Section 4, Article II of the same RA, viz:

- f. License and accredit child-caring/placement agencies and collaborate with them in the placement of Filipino children;
- g. Accredit and authorize foreign adoption agency in the placement of Filipino children in their own country; and
- h. Cancel the license to operate and blacklist the child- caring and placement agency or adoptive agency involved from the accreditation list of the Board upon a finding of violation of any provision under this Act.

With the passage of RA No. 11642, all duties and function of the ICAB relating to alternative child and adoption will now be exercised by NACC, particularly Section 4(g) of RA No. 8043 – **accredit and authorize foreign adoption agency in the placement of Filipino children in their own country.**

However, the authority to license and accredit child-caring/placement agencies and to cancel the license to operate and blacklist the child-caring placement agencies remain with DSWD pursuant to Section 4 (k) and (m) of RA 11642, *to wit:*

“(k) Child-caring agency refers to a duly licensed and accredited agency by the DSWD that provides twenty-four (24)-hour residential care services for abandoned, orphaned, neglected, or voluntarily and involuntarily committed children;”

xxx

“(m) Child-placing agency refers to a private nonprofit or charitable or government agency duly licensed and accredited agency by the DSWD to provide comprehensive child welfare services including receiving and processing of petitions for adoption and foster care, evaluating the prospective adoptive parents (PAPs) or foster parents, preparing the child case study report and home study report;”

In addition, Section 4(p),(r), and (s) of the Implementing Rules and Regulations of RA No. 11642 likewise explained further the authority of DSWD and NACC on the CCAs and CCPs:

“(p) Child-caring agency refers to a duly licensed and accredited by the DSWD, that provides twenty-four (24)-hour residential care services for abandoned, orphaned, neglected, voluntarily committed or involuntarily committed children and other children in need of alternative child care;”

xxx

“(r) Child Placement Committee (CPC) refers to the committee under the supervision of the Deputy Director for Services composed of the Deputy Director for Services of a child psychiatrist or psychologist, a medical doctor, a lawyer, an adoption social worker, a representative of a non-government organization (NGO) engaged in child welfare, and any other professional as may be needed, to provide the necessary assistance in reviewing petitions for adoption and deliberate case for interregional and intercountry matching. The CPC, for purposes of intercountry adoption, shall accredit foreign adoption agencies. Regional CPCs shall be organized/created under the supervision of the RACCOs;

“(s) Child-placing agency refers to a government or a - private non-profit or charitable agency duly licensed and accredited by the DSWD to provide comprehensive child welfare services including receiving and processing of petitions for adoption and foster care, evaluating the prospective adoptive parents (PAP/s) or foster parents, preparing the child case study report and home study report and provide post placement services. The Local Social Welfare and Development Office (LSWDO) and accredited NGOs and Faith-Based Organizations (FPBs) are considered child-placing agencies;”

Based on the foregoing laws, **NACC has the power to accredit and authorize foreign adoption agencies** in the placement of Filipino children in their country, and such authority is lodged under the Child Placement Committee.

DSWD Duties and Functions

Prior to the enactment of RA No. 11642¹, the Department exercises jurisdiction over alternative child care and adoption particularly on dependent, abandoned or neglected child², which may be subject to guardianship custody proceedings³ such as, but not limited to, declaring a child, in lieu of a judicial process, legally available for adoption of abandoned, surrendered, or neglected children as an expeditious alternative method of protection and assistance to children⁴ and pre-adoption programs⁵.

The **Transitory Clause** under Section 56 of RA No. 11642 specifically mentions that *“upon effectivity of this Act and during the pendency of the **establishment of the NACC**, the functions relating to foster care, issuance of CDCLAA, and adoption under Republic Act No. 11222 shall remain with the DSWD, specifically, its Program Management Bureau (PMB).”* (emphasis supplied)

We cite likewise the remaining provisions in the Transitory Clause for reference with respect to the specific functions of DSWD that would be transferred to NACC:

In relation to domestic administrative adoption and inter-country adoption process, a transition team composed of the DWSD and the ICAB shall act as the NACC. The ICAB Executive Director shall sit as Chairperson of the transitory team, assisted by the DSWD-PMB Director as the Vice-Chairperson. Personnel of the DWSD involved in adoption services may be seconded to the transition team during the three (3)-year period. During this period, social workers already working with adoption cases may continue to perform all duties assigned to adoption social workers in accordance with the provisions of this Act.

The functions of the RACCO shall, during the three (3) year period, be performed by the DWSD field offices (FOs), specifically the Adoption Resource and Referral Units (ARRU) therein. The transition team shall provide technical assistance and policy guidance to personnel of the FOs in handling cases. A transitory team shall be created from the DSWD and the ICAB to ensure non-disruption of performance of functions and continued smooth delivery of services

¹ Domestic Administrative Adoption and Alternative Child Care Act

² Article 22, Title II. Child and Youth Welfare and the Home, Presidential Decree No. 603, s 1974 entitled “Child and Youth Welfare Code”

³ Article 23, Title II. Child and Youth Welfare and the Home, Presidential Decree No. 603, s 1974

⁴ Section 1, Republic Act No. 9523

⁵ Republic Act No. 8552 or the “Domestic Adoption Act of 1998”

during the migration of all alternative child care functions and services to the NACC.

During the transition period, all Orders of Adoption issued and signed by the ICAB Executive Director as chairperson of the transition team, upon the recommendation of its members, shall be approved by the Secretary of the DSWD, or his representative in the ICAB Board, within a period of then (10) days from the issuance of said order: *Provided*, That if no action was taken by either the Secretary or his representative in the ICAB Board during the prescribed period, the Order of Adoption shall be deemed approved.

Upon the establishment of the NACC not later than three (3) years from the effectivity of this Act, all applications, submissions, and petitions involving child care, including the pre-adoption and post-adoption services, pending before the PMB and the ICAB shall be immediately forwarded to the NACC, which shall perform its functions and powers under this Act. Thereafter, the appropriate personnel of the ICAB and the DSWD involved in alternative child care services shall be permanently transferred to the NACC. This relevant offices in the regional offices of the DSWD involved in alternative child care shall, hereafter, be converted into RACCOS.

Clearly, the DSWD duties and functions that are transferred to NACC upon its establishment are those *relating to foster care, issuance of CDCLAA, adoption under Republic Act No. 11222, and the functions of the ARRU which would then become the functions of the Regional Alternative Child Care Office or RACCO of NACC*. There is nothing in the aforesaid law that the regulatory powers pertaining to the registration, licensing, and accreditation of domestic SWDAs involving child-caring agency and child-placing agency are transferred to NACC.

NACC as Recommending Authority on matters relating to the registration, licensing, and accreditation of SWDAs carrying alternative child care programs

DSWD is mandated to develop, implement social welfare programs that would help and provide assistance that will alleviate poverty and empower disadvantaged individuals, families and communities for an improved quality of life as well as implement statutory and specialized programs which are directly lodged with the Department⁶.

In the effective implementation of its statutory mandate, DSWD has the authority to accredit institutions and organizations engaged in social welfare activities⁷ and set standards, accredit and provide consultative services to public and private institutions, organizations and persons engaged in social welfare activities, and monitor, performance and compliance to standards by institutions, organizations and persons engaged in social welfare activities, both public and private⁸, thus, under Section 2(d) of Executive Order No. 221, Series of 2003, the DSWD is given the specific role to be

⁶ Section 1 of Executive Order No. 221, Series of 2003

⁷ Section 3 (7), Chapter 1, Title XVI of Executive Order No. 292, Series of 1987

⁸ Section 3 (a) of Executive Order No. 221, Series of 2003

the *licensor and accreditor of social welfare development agencies and service providers*.

Relative thereto, Section 24 and 26, Title XVI, Chapter 10 of Executive Order (EO) No. 292, Series of 1987⁹ provides:

“Section 24. Social Work Agency.—(1) **No social work agency shall operate and be accredited as such unless it is registered with the Department** which shall issue the corresponding certificate of registration.

x x x

Section 26. Foster Homes.—**No foster home, day care center and other substitute parental arrangement shall operate unless it is first registered with and licensed by the Department.**” (Emphasis Supplied)

Pursuant thereto, the DSWD issued Memorandum Circular No. 17, Series of 2018¹⁰ which provides for the guidelines which a SWDA can register, apply for license, and be accredited by the Department, to wit:

“2. This guideline likewise emphasizes the objective of Registration, Licensing, and Accreditation, namely:

2.1. To regulate and enforce SWD standards to public and private organizations in the country that are engaged and are planning to engage in SWD programs and services endeavor through registration, licensing, and accreditation;

2.2. To improve the registration, licensing, and accreditation processes and the conduct of monitoring and technical assistance to SWDAs for the delivery of quality SWD programs and services;

2.3. To protect the clients against abuses, exploitations and inefficiency from organizations engaging in SWD activities;

x x x”

Considering that NACC’s authority is clear with respect to the authority and accreditation of **foreign adoption agencies** in the placement of Filipino children in their country, the issue now is whether NACC may be considered as a “Recommending Authority” with regard to the **accreditation of programs relating to alternative child care by registered and licensed SWDAs**.

We answer in the affirmative.

⁹ Administrative Code of 1987

¹⁰ “Revised Guidelines Governing the Registration, Licensing of Social Welfare and Development (SWD) Agencies and Accreditation of SWD Programs and Services”

Foremost, it is worthy to mention that EO No. 292 enumerated and defined the different kinds of administrative relationship between the agency or corporation and to the Department to which it is attached. Under Book IV, Chapter 7, Section 38 of the said EO, it provides:

"CHAPTER 7
Administrative Relationships

SECTION 38. Definition of Administrative Relationships. —Unless otherwise expressly stated in the Code or in other laws defining the special relationships of particular agencies, administrative relationships shall be categorized and defined as follows:

x x x

(3) **Attachment.** —(a) This refers to the lateral relationship between the department or its equivalent and the attached agency or corporation for purposes of policy and program coordination. The coordination may be accomplished by having the department represented in the governing board of the attached agency or corporation, either as chairman or as a member, with or without voting rights, if this is permitted by the charter; having the attached corporation or agency comply with a system of periodic reporting which shall reflect the progress of programs and projects; and having **the department or its equivalent provide general policies through its representative in the board, which shall serve as the framework for the internal policies of the attached corporation or agency;**

x x x" (Emphasis Supplied)

It can be gleaned from the foregoing that the DSWD has the sole authority to issue accreditation to SWDAs whose primary concern is implementation of social welfare programs, including but not limited to SWDAs whose mandate is aligned with adoption and alternative child care, notwithstanding the transfer of all matters relative to adoption and alternative child care NACC.

Meanwhile, as an attached agency to the Department whose sole responsibility is to swiftly implement its mandates vested upon it, the NACC is not precluded from making necessary recommendations (i.e. recommending SWDAs for accreditation) as part of their regulatory and delegated quasi-legislative power under the direct supervision of the DSWD.

Most importantly, the Secretary of a Department has the power and ¹¹functions to establish the policies and standards for the operation of the Department pursuant to the approved programs of government; promulgate rules and regulations necessary to carry out department objectives, policies, functions, plans, programs and projects; and exercise jurisdiction over all bureaus, offices, agencies and corporations under the Department, among others.

¹¹ Section 7, Items (2), (3), and (7), Book IV of EO No. 292

The Secretary, DSWD, for the purpose of applying RA No. 11642 in relation to the Department's exercise of regulatory powers over SWDAs, may consider the NACC as a Recommending Authority to assist in the evaluation of applications pertaining to the **accreditation of alternative child care programs** of the SWDAs.

As an attached agency of DSWD, the NACC shall perform its mandate as a one-step quasi-judicial agency on **alternative child care**, a matter over which NACC exercises original and exclusive jurisdiction. Therefore, the act of designating NACC as a Recommending Authority pertaining to application for accreditation of **alternative child care programs** filed by registered and licensed SWDAs is reasonable and in accordance with the law and implementing rules. This policy may be issued by way of an Administrative Order as the arrangement is an internal matter to be implemented within DSWD.

In support of this conclusion is the case of *Philippine International Trading Corporation v. Honorable Judge Zosimo Angeles*, G.R. No. 108461, 21 October 1996 wherein the Supreme Court held that *"as a result of the growing complexity of the modern society, it has become necessary to create more and more administrative bodies to help in the regulation of its ramified activities. Specialized in the particular field assigned to them, they can deal within the problems thereof with more expertise and dispatch than can be expected from the legislature or the courts of justice. This is the reason for the increasing vesture of quasi-legislative and quasi-judicial powers in what is now not unreasonably called the fourth department of the government. X X X the PITC was legally empowered to issue Administrative Orders, as a valid exercise of a power ancillary to legislation.*


In sum, we are of the considered view that:

1. With the passage of RA No. 11642, all duties and function of the ICAB relating to alternative child and adoption would be exercised by NACC, particularly Section 4(g) of RA No. 8043 -- **accredit and authorize foreign adoption agency in the placement of Filipino children in their own country.**
2. **NACC has the power to accredit and authorize foreign adoption agencies** in the placement of Filipino children in their country, and such authority is lodged under the Child Placement Committee.
3. DSWD duties and functions that are transferred to NACC upon its establishment are those *relating to foster care, issuance of CDCLAA, adoption under Republic Act No. 11222, and the functions of the ARTU which would then become the functions of the Regional Alternative Child Care Office or RACCO of NACC.* There is nothing in the aforesaid law that the regulatory powers pertaining to the registration, licensing, and accreditation of domestic SWDAs involving child-caring agency and child-placing agency are transferred to NACC.

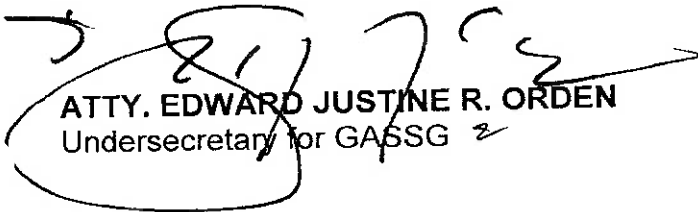
4. The Secretary, DSWD, for the purpose of applying RA No. 11642 in relation to the Department's exercise of regulatory powers over SWDAs, may consider the NACC as a Recommending Authority to assist in the evaluation of applications pertaining to the **accreditation of alternative child care programs** of the SWDAs. This policy may be issued by way of an Administrative Order as the arrangement is an internal matter to be implemented within DSWD.

For your consideration.

Thank you.


ATTY. GINA V. WENCESLAO
MIBP/ESQE

RECOMMENDED BY:


ATTY. EDWARD JUSTINE R. ORDEN
Undersecretary for GASSG 2