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# Department of Economic Security

## Five - year Review Reports

A.R.S. § 41-1056 requires that at least once every five years, each agency shall review its administrative rules and produce reports that assess the rules with respect to considerations including the rule's effectiveness, clarity, conciseness and understandability. The reports also describe the agency's proposed action to respond to any concerns identified during the review. The reports are submitted in compliance with the schedule provided by the Governor's Regulatory Review Council. A.R.S. § 18-305, enacted in 2016, requires that statutorily required reports be posted on agency's website.

**Arizona Department of Economic Security**

**Five-Year Review Report**

**Title 6. Economic Security**

**Chapter 8. Aging and Adult Administration**

**Article 1. Grievances and Hearings**

**Article 2. Adult Protective Services**

**February 28, 2017**

**Revised May 19, 2017**

## Introduction

The Older Americans Act of 1965 (42 U.S.C. § 3001 *et seq.*) was enacted to give older Americans increased opportunities to participate in the benefits of American society. The Act was aimed at improving the lives of older persons in the areas of income, health, housing, employment, retirement, and community services. Created during a time of rising societal concerns for the poor and disadvantaged, the Act affirmed the nation's sense of responsibility toward the well-being of older citizens.

The Division of Aging and Adult Services provides an array of services to help people achieve and maintain the highest level of independence and self-sufficiency. Services and programs reach a diverse population of Arizonans from homeless youth to older adults. The Division's programs provide a safety net of services to the community, working to ensure safety and self-sufficiency so that all Arizonans can live with dignity and independence throughout their lives.

The Division is comprised of the following units:

- Adult Protective Services – Adult Protective Services (APS) receives and investigates incidents of abuse, neglect, self-neglect, or exploitation of vulnerable adults, and suggests appropriate services based on individual needs and the individual's willingness to accept services. The APS Central Intake Hotline allows the public to report allegations of abuse, neglect, self-neglect, and exploitation of vulnerable adults, at any time through telephone or online.
- Community Action Programs and Services – These units strengthen the safety net for vulnerable and at-risk individuals and families through community engagement.

These programs include the Short-Term Crisis Services and the Energy Assistance Program.

- Aging and Disability Services – This unit is comprised of programs that serve to protect the rights of older adults, prevent fraud and abuse against older adults, and provide information and assistance on benefits and options, including Medicare, while providing Home and Community Based Services to ensure aspects of healthy and independent living.
- Area Agencies on Aging – In order to accomplish its mission, the Division works with eight Area Agencies on Aging (AAA). These agencies serve as advocates for clients, and work to develop a comprehensive service delivery system that most accurately reflects the needs of the local community. The AAAs have a responsibility to ensure that support and nutrition services are available to older persons in local communities. The Older Americans Act funds AAAs to implement, coordinate, and expand services. Some services are delivered through multi-purpose senior centers that provide home-delivered meals, group meals at the centers, and education, information, and referral activities. Arizona’s AAAs served 301,000 individuals in the past federal fiscal year.

## **CHAPTER 8. DEPARTMENT OF ECONOMIC SECURITY**

### **AGING AND ADULT ADMINISTRATION**

#### **A. STATUTORY AUTHORITY**

**General Authority:** A.R.S. §§ 41-1954(A)(3), 41-1003, and 46-134(A)(10).

**Specific Authority:** A.R.S. §§ 41-1954(A)(1)(b); 41-1991 to 41-1995; 46-182; 46-191 to 46-193; 46-451 to 46-459.

#### **B. OBJECTIVES**

##### **Article 1 – Grievances and Hearings**

###### **R6-8-101. Definitions**

The objective of this rule is to promote uniform understanding of the terminology used by the Division of Aging and Adult Services. The purpose of this rule is to clearly define the terms used in Article 1.

###### **R6-8-102. Client Complaint Resolution Procedures**

The objective of this rule is to require each area agency to have a written complaint resolution procedure. The purpose of this rule is to provide the public with a procedure to grieve issues with program services or denial of benefits.

###### **R6-8-103. Right to Review**

The objective of this rule is to explain who may request an administrative review. The purpose of this rule is to identify which actions are eligible for administrative review.

###### **R6-8-104. Administrative Review Procedures**

The objective of this rule is to provide administrative review procedures. The purpose of this rule is to explain the procedures to initiate an administrative review.

**R6-8-105. Right to Appeal**

The objective of this rule is to allow a client to appeal an administrative review decision. The purpose of this rule is to specify a client may appeal a decision by a contracted service provider or of the program administrator.

**R6-8-106. Filing an Appeal**

The objective of this rule is to provide appeal procedures. The purpose of this rule is to explain the process to the public to file an appeal.

**R6-8-107. Service on Parties**

The objective of this rule is to identify how documents will be served to parties. The purpose of this rule is to explain that all documents will be served by mail.

**R6-8-108. Time**

The objective of this rule is to explain the computation of time. The purpose of this rule is to provide the public with a clear understanding of deadlines when filing an appeal.

**R6-8-109. Scheduling and Notice of Hearing**

The objective of this rule is to explain how hearings are scheduled, and how the Department will give notice to the parties. The purpose of this rule is to explain the hearing schedule and the hearing notice.

**R6-8-110. Change of Hearing Officer**

The objective of this rule is to explain that a party may request a change of hearing officer. The purpose of this rule is to describe the procedure to request a change of hearing officer.

**R6-8-111. Failure of a Party to Appear**

The objective of this rule is to identify a procedure when a party fails to appear for a hearing. The purpose of this rule is to explain how a party may reschedule a hearing.

**R6-8-112. Subpoena of Witnesses and Documents**

The objective of this rule is to explain how a hearing officer may subpoena witnesses and documents. The purpose of this rule identifies a subpoena's contents and delivery method.

**R6-8-113. Conduct of Hearing**

The objective of this rule is to explain how to conduct a hearing. The purpose of this rule is to identify the hearing procedure the parties will follow.

**R6-8-114. Hearing Decision**

The objective of this rule is to explain how to issue a hearing decision. The purpose of this rule identifies the contents of a hearing decision.

**R6-8-115. Termination of Appeal**

The objective of this rule is to explain how to terminate an appeal. The purpose of this rule is to identify the process for terminating an appeal.

**R6-8-116. Appeal to the Commissioner on Aging**

The objective of this rule is to explain that an appeal may be made to the Commissioner on Aging. The purpose of this rule is to describe how an appeal is made to the Commissioner on Aging.

**R 6-8-117. Review by the Appeals Board**

The objective of this rule is to provide for the appeal of certain cases to the Appeals Board. The purpose of this rule is to identify which cases may be appealed and the appeals procedure.

**Article 2 – Adult Protective Services**

**R6-8-201. Definitions**

The objective of this rule is to promote uniform understanding of the terminology used by APS. The purpose of this rule is to clearly define the terms used in Article 2.

**R6-8-202. Reporting Requirements for Adult Protective Services Cases**

The objective of this rule is to explain reporting requirements for APS cases. The purpose of this rule is to identify the information APS will obtain from reporting parties.

**R6-8-203. Eligibility for Services**

The objective of this rule is to explain the eligibility requirements for APS. The purpose of this rule is to identify which individuals may receive services.

**R6-8-204. Jurisdiction**

The objective of this rule is to specify the jurisdictional requirements for APS. The purpose of this rule is to establish that APS may only investigate incidents within the state and on Tribal lands, with written permission from the Tribal council.

**R6-8-205. Classification**

The objective of this rule is to explain how incoming communications are classified. The purpose of this rule is to distinguish between informational communications and those requiring investigation.

**R6-8-206. Investigation**

The objective of this rule is to explain how APS reports are evaluated. The purpose of this rule is to establish procedures for how investigators will assess vulnerable adults and identify an adult's needs.

**R6-8-207. Case Planning**

The objective of this rule is to explain how an investigator shall maintain a case plan for vulnerable adults in need of protective services. The purpose of this rule is to establish the contents of a vulnerable adult's case plan and the adult's right to be involved in the case plan.

**R6-8-208. Refusal of Services by the Adult or Guardian**



The objective of this rule is to explain the procedures when an adult refuses adult protective services. The purpose of this rule is to establish an adult's right to refuse APS involvement and the actions APS may take if it believes an adult is in need of services.

**R6-8-209. Case Closure**

The objective of this rule is to explain when APS may close a case. The purpose of this rule is to establish a criteria to close a case.

**R6-8-210. Confidentiality**

The objective of this rule is to explain the Department's confidentiality procedures for APS cases. The purpose of this rule is to establish a process to request confidential information.

## **C. EFFECTIVENESS**

### **Article 1 – Grievances and Hearings**

The 2012 Five-Year Review Report identified a number of issues with the rules in Article 1. In addition, the Department has identified new issues that diminish the effectiveness of the Article 1 rules.

**R6-8-101. Definitions**

This rule would be more effective if several definitions including, but not limited to, "Division," "Area agency," and "Program Administrator" were revised to reflect current policy and practice. This rule would be more effective if "Nutrition project" were deleted as it is inconsistent with policy and practice. The addition of several definitions including, but not limited to, definitions for the "Assistant Director," "Office of Appeals," and "Service Provider" would further strengthen the effectiveness of this rule by promoting consistency in the use and understanding of terminology.

**R6-8-102. Client Complaint Resolution Procedures**

The 2012 Five-Year Review Report stated this rule should provide more information regarding the operation of complaint resolution procedures. This rule would be more effective if written to require that each service provider, along with an Area Agency, establish written complaint resolution procedures. This rule would be further effective if written to require that a complaint with a service provider is resolved with the provider before further action by an Area Agency and the Area Agency inform the client of the right to an administrative review.

**R6-8-103. Right to Review**

The 2012 Five-Year Review Report stated this rule should provide more information relating to who may obtain an administrative review. This rule would be more effective if the reasons to request an administrative review included clients aggrieved by an Area Agency or service provider decision, a service provider aggrieved by an Area Agency decision, and an Area Agency aggrieved by a Department decision.

**R6-8-104. Administrative Review Procedures**

The 2012 Five-Year Review Report stated this rule should provide a more detailed explanation of the administrative review procedure. This rule would be more effective if written to require that the request for administrative review were filed with the Assistant Director, rather than the Program Administrator, to reflect current policy and practice. This rule would be further effective if revised to state that the Assistant Director shall issue a written decision within 60 days of the filing of an administrative review and inform the client of the right to appeal the decision.

**R6-8-105. Right to Appeal**

The 2012 Five-Year Review Report stated this rule should provide greater specificity about matters that may be appealed. This rule would be more effective if it stated that the request for an

appeal came from a decision that denied or terminated a client's services. This rule would be further effective if modified to state that the Assistant Director issued the decision to reflect current policy and practice.

**R6-8-106. Filing an Appeal**

The 2012 Five-Year Review Report stated this rule should provide address information when filing an appeal. This rule would be more effective if the Department provided the Assistant Director's address to file an appeal.

**R6-8-109. Scheduling and Notice of Hearing**

The 2012 Five-Year Review Report stated this rule should clarify that a hearing officer may reschedule for good cause and provide a time limit for making the request. This rule would be more effective if it required a party to provide notice that the party is unable to attend the hearing and provide a reason for the party's nonappearance. This rule would be further effective if good cause was defined.

**R6-8-110. Change of Hearing Officer**

The 2012 Five-Year Review Report stated this rule should clarify the circumstances and procedure that allows a party to request a change of hearing officer. This rule would be more effective if it provided that a party requesting a change in hearing officer specifically state if the officer was biased or had an interest in the case.

**R6-8-111. Failure of the Party to Appear**

The 2012 Five-Year Review Report stated this rule should clarify that a hearing officer has the authority to dismiss an appeal and elaborate on good cause procedures for reopening a hearing. This rule would be more effective if the circumstances under which a hearing officer could

dismiss, adjourn, or decide a case was specified. This rule would be further effective if good cause was defined.

**R6-8-112. Subpoena of Witnesses and Documents**

The 2012 Five-Year Review Report stated this rule should clarify that a party must try to obtain information through voluntary means before requesting a subpoena and provide more detailed requirements for requesting a subpoena. The Department reviewed this rule in preparation for this report and determined the rule is sufficiently detailed and effective. Requiring a party to seek information without a subpoena's authority places an undue burden on the party if the custodian of the information refuses to voluntarily submit the information.

**R6-8-113. Conduct of Hearing**

The 2012 Five-Year Review Report stated this rule should clarify the powers of a hearing officer and provide more detail with respect to rules of evidence used at the hearing and burden of proof. This rule would be more effective if the rule specified whether formal rules of evidence are required and identified the burden of proof the appealing party must meet.

**R6-8-116. Appeal to the Commissioner on Aging**

The 2012 Five-Year Review Report stated this rule should replace references to the "Commissioner on Aging" with the "Assistant Secretary of Aging." This rule would be more effective if the "Assistant Secretary of Aging" replaced the "Commissioner on Aging" to reflect current federal law.

**R6-8-117. Review by the Appeals Board**

The 2012 Five-Year Review Report stated this rule should clarify the procedures for seeking review by the Appeals Board. This rule would be more effective if the rule specified what decisions the Appeals Board may review.

## **Article 2 – Adult Protective Services**

With the exception of the issues raised below, the rules in Article 2 are effective in meeting their objectives.

### **R6-8-201. Definitions**

This rule would be more effective if subsection 8 “Information and referral,” were deleted as it is inconsistent with current policy and practice. This rule would be more effective if subsections 9 “Intake,” and 18 “Report,” were revised to reflect current policy and practice. The addition of several definitions including, but not limited to, definitions for incoming communication, screening, incapacitated adult, vulnerable adult, maltreatment, abuse, neglect, and exploitation would further strengthen the effectiveness of this rule by promoting consistency in the use and understanding of terminology.

### **R6-8-202. Reporting Requirements for Adult Protective Services Cases**

This rule would be more effective if it provided the public with information on methods for contacting the APS Central Intake Hotline, including through telephone or online reporting.

### **R6-8-203. Eligibility for Services**

This rule would be more effective if subsection 3 was amended to include allegations of self-neglect as an eligibility criteria to reflect current policy and practice.

### **R6-8-204. Jurisdiction**

This rule would be more effective if it were combined into R6-8-203, which identifies jurisdiction as a criteria for service eligibility.

### **R6-8-205. Classification**

This rule would be more effective if it were revised to reflect current policy and practice that the Central Intake Hotline, rather than an APS worker, is responsible for receiving and classifying

communications regarding alleged abuse, neglect, exploitation, or self-neglect of a vulnerable adult. The effectiveness of this rule would be further enhanced through outlining the actions taken by the Central Intake Hotline for report and non-report communications to ensure appropriate and timely response.

**R6-8-206. Investigation**

This rule would be more effective if it were revised to include essential investigative tasks completed by the APS investigator, including assessment of the safety and risk of the vulnerable adult.

**R6-8-207. Case Planning**

This rule would be more effective if the language regarding the vulnerable adult's right to be included in case planning and decision-making was clarified.

**R6-8-208. Refusal of Services by the Adult or Guardian**

This rule would be more effective if the language regarding the vulnerable adult's right to refuse APS services was clarified.

**R6-8-209. Case Closure**

This rule would be more effective if the reasons for case closure were revised to reflect current practice.

**Proposed Rules to Increase Effectiveness**

Article 2 currently does not contain any information regarding the rights of alleged perpetrators and contains only minimal information regarding the rights of alleged victims in APS investigations. The Department recommends strengthening the effectiveness of this Article through the inclusion of a new rule outlining the rights of alleged victims and perpetrators. The

purpose of this new rule would be to establish consistent treatment of alleged victims and perpetrators and provide alleged victims and perpetrators with notice of their rights.

## **D. CONSISTENCY**

### **Article 1 – Grievances and Hearings**

The rules in Article 1 are consistent with state and federal law that are applicable to this Article, with the following exception noted in Section C above:

#### **R6-8-116. Appeal to the Commissioner on Aging**

The “Assistant Secretary of Aging” should replace the “Commissioner on Aging” to reflect current federal law.

The rules in Article 1 are consistent with Department policy, with the following exceptions noted in Section C above:

#### **R6-8-101. Definitions**

This rule contains definitions including “Division,” “Area agency,” and “Program Administrator” that are inconsistent with current policy. “Nutrition project” should be deleted as it is inconsistent with current policy. The addition of several definitions including “Assistant Director,” “Office of Appeals,” and “Service Provider” would promote consistency in the use and understanding of terminology.

#### **R6-8-104. Administrative Review Procedures**

This rule requires a request for administrative review to be filed with the Program Administrator rather than the Assistant Director that is inconsistent with current policy.

#### **R6-8-105. Right to Appeal**

This rule states the Program Administrator shall issue a decision rather than the Assistant Director that is inconsistent with current policy.

## **Article 2 – Adult Protective Services**

The rules in Article 2 are consistent with state law. There is no applicable federal law to this Article. The rules in Article 2 are consistent with Department policy, with the following exceptions noted in Section C above:

### **R6-8-201. Definitions**

Subsection 8 of this rule contains a definition of “Information and referral” that is inconsistent with APS policy.

### **R6-8-203. Eligibility for Services**

This rule omits self-neglect as an eligibility criteria for APS. Under current APS policy, allegations of self-neglect are investigated provided they meet other eligibility criteria.

### **R6-8-205. Classification**

This rule is inconsistent with APS policy which designates the APS Central Intake Hotline with responsibility for receiving and classifying communications regarding alleged abuse, neglect, exploitation, or self-neglect of a vulnerable adult. As currently written, this rule could be interpreted that any APS worker could receive and classify incoming communications.

## **E. ENFORCEMENT**

### **Article 1 – Grievances and Hearings**

The Department enforces the rules in Article 1 as written.

### **Article 2 – Adult Protective Services**

The Department enforces the rules in Article 2 as written.

## **F. CLEAR, CONCISE AND UNDERSTANDABLE**

### **Article 1 – Grievances and Hearings**



Article 1 is not clear, concise, or understandable due to lack of information, as discussed in Section C above.

### **Article 2 – Adult Protective Services**

Article 2 is not clear, concise, or understandable due to lack of information related to client and alleged perpetrator rights, as discussed in Section C above.

## **G. WRITTEN CRITICISMS**

The Department has not received any written criticisms of the rules in Articles 1 or 2.

## **H. ECONOMIC IMPACT COMPARISON**

The Department does not have an Economic Impact Statement for Article 1 because the rules have not been amended since 1993. The Department submitted an Economic Impact Statement for Article 2 with the Five-Year Review Report in 2012, which has been attached. It was estimated that the rules would have minimal cost. The estimation submitted in 2012 was accurate, and the rules have not had a significant cost impact.

### **Article 1 – Grievances and Hearings**

#### **Individuals Served:**

In State Fiscal Year (SFY) 2016, the Division of Aging and Adult Services served 353,095 through its programs. The Community Action Programs and Services served 31,263 individuals and 321,832 individuals were assisted by Aging and Disability Services

#### **Employees:**

There were approximately 10 Full Time Equivalents with the Aging and Disability Services, and 3 Full Time Equivalents in the Community Action Programs and Services in SFY 2016.

#### **Funding:**

The Division's budget was approximately \$104 million in SFY 2016.

**Grievances and Hearings:**

There were 5 grievances filed from SFY 2012 to date. All grievances were resolved by administrative review.

**Article 2 – Adult Protective Services**

**Individuals Served:**

In SFY 2016, the APS Central Intake Hotline received 28,961 inquiries to its general resource, report, and law enforcement phone lines. Of those, 25,964 calls (90 percent) were answered by an Intake Specialist. During this same period, APS received 13,096 written inquiries (online, mail, and fax) regarding suspected maltreatment of a vulnerable adult. In SFY 2016, the number of communications entered into the APS case management system involving vulnerable adult abuse reached an all-time high of 21,654. This represents a 62 percent increase since SFY 2012. Of these communications, 11,629 (54 percent) were accepted as reports and investigated. Of the reports investigated in SFY 2016, 7,596 reports (65 percent) contained an allegation of neglect, including individuals who were unable to meet their own basic needs due to their vulnerability; 3,138 reports (27 percent) contained an allegation of abuse; and 2,460 (21 percent) contained an allegation of exploitation. A report may contain more than one type of allegation, thus the percentages total more than 100 percent.

**Employees:**

There were approximately 215 Full Time Equivalentents in the APS program in SFY 2016, including Central Intake, field investigations, program administration, and support staff.

**Funding:**

The funding to operate the APS program has no dedicated federal funding and is reliant on state funds. DES does supplement the APS operating budget with federal Social Services Block Grant funds when available. The APS operating budget was \$13.9 million in SFY2016.

## **I. BUSINESS COMPETITIVENESS ANALYSIS**

The Department did not receive a business competitive analysis from a member of the public during the process of preparing this report.

## **J. COURSE OF ACTION FROM PREVIOUS 5-YEAR REVIEW REPORT**

### **Article 1 – Grievances and Hearings**

The 2012 Five-Year Review Report stated Article 1 required amendment to provide further comprehensive information on complaint and administrative review procedures. The Department received a regulatory moratorium exception in 2009, allowing revision of Article 1. In 2010, the Governor’s Office placed a hold on the exception and Article 1 underwent no further revision. The Department revised policy and practice to conform to and supplement the existing rules. Additionally, the Department provides a clear explanation of grievance procedures on a form given to potential grievants and has observed that method helps make the grievance process clear and accessible for potential grievants. The Department reviewed Article 1 and the 2012 Five-Year Review Report in preparing for this report and conclude that the rules require revision to function effectively.

### **Article 2 – Adult Protective Services**

The Department completed the course of action from the previous Five-Year Review Report for Article 2. The Notice of Final Rulemaking for Article 2 (18 A.A.R. 2716) was

approved by the Governor's Regulatory Review Council on October 2, 2012, effective December 2, 2012. This rulemaking amended Rules R6-8-201, R6-8-204, R6-8-205, R6-8-206, and R6-8-210.

## **K. DETERMINATION OF BURDEN AND COSTS**

### **Article 1 – Grievances and Hearings**

The Department believes that the rules will impose the least burden and costs to persons regulated by the rules, once changes indicated in the report to Article 1 are made.

### **Article 2 – Adult Protective Services**

The Department believes that the rules will impose the least burden and costs to persons regulated by the rules, once changes indicated in the report to Article 2 are made.

## **L. PROPOSED ACTION**

### **Article 1 – Grievances and Hearings**

As previously stated in Sections C and D, the Department believes Article 1 requires amendment to the current rules. Amendments to Article 1 would reflect currently policy and practice, and provide more information on the administrative review procedures and appeals process. The Department will prepare to seek an exception from the regulatory moratorium to amend Article 1. The Department anticipates filing a Notice of Final Rulemaking with the Council in February, 2019, contingent upon receiving a moratorium exception.

### **Article 2 – Adult Protective Services**

As previously stated in Sections C and D, the Department believes Article 2 requires amendment to the current rules and creation of a new rule. Amendments to Rules R6-8-201 through R6-8-209 would reflect current policy and practice, and clarify APS's responsibilities during investigations and case planning. A new rule would further delineate the rights of

vulnerable adults and alleged perpetrators during investigations. The Department is preparing to seek an exception from the regulatory moratorium to amend Article 2. The Department anticipates filing a Notice of Final Rulemaking with the Council in February, 2019, contingent upon receiving a moratorium exception.