

-Preface-

Arizona 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 (GRRC). A.R.S. § 18-305, enacted in 2016, requires that statutorily required reports be posted on the agency's website.

**Arizona Department of Economic Security
Title 6, Chapter 8 - Aging and Adult Administration
Five-Year Review Report**

1. Authorization of the rule by existing statutes

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

Specific Statutory Authority: A.R.S. §§ 41-1954(A)(1)(b), 46-182, 46-191 through 46-193, 46-451 through 46-474.

2. The objective of each rule

| Rule | Objective |
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| Article 1 | |
| R6-8-101 | The objective of this rule is to define terms used in Chapter 8. |
| R6-8-102 | The objective of this rule is to describe area agency complaint resolution processes, including requirements for the contents of written procedures and allotted timeframes. |
| R6-8-103 | The objective of this rule is to explain when an administrative review is available. |
| R6-8-104 | The objective of this rule is to describe the processes and requirements for an administrative review. |
| R6-8-105 | The objective of this rule is to describe the right to file an appeal of the Department's final decision. |
| R6-8-106 | The objective of this rule is to describe the process that a client or grievant follows to file an appeal described in R6-8-105. |
| R6-8-107 | The objective of this rule is to explain when a document is considered to be served on a party. |
| R6-8-108 | The objectives of this rule are to clarify the meaning of "days" and explain how the Department computes time for purposes of this Article. |
| R6-8-109 | The objectives of this rule are to describe how hearings are scheduled and by whom, describe how the Department gives notice of a hearing to the parties, and explain that a party may request postponement of a hearing if the party has good cause for doing so. |
| R6-8-110 | The objective of this rule is to explain when and how a party may request a change of hearing officer. |
| R6-8-111 | The objectives of this rule are to explain the consequences for a party's failure to appear for a hearing and that a party may request to reopen a hearing when there was good cause for the failure to appear. |
| R6-8-112 | The objectives of this rule are to describe the requirements for a party to request that the hearing officer issue a subpoena for witnesses or |

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| | documents and to specify how the Department serves all subpoenas. |
| R6-8-113 | The objective of this rule is to describe how the Department conducts a hearing including the role of the hearing officer, guidance about evidence, and creation of the hearing record. |
| R6-8-114 | The objectives of this rule are to explain how the Department issues a hearing decision to each party, to identify the contents of a hearing decision, and to specify the applicability and finality of a hearing decision. |
| R6-8-115 | The objectives of this rule are to describe how to terminate an appeal, either voluntarily or by default. |
| R6-8-116 | The objectives of this rule are to describe when an appellant may file an appeal to the Commissioner on Aging with the U.S. Department of Health and Human Services (HHS), the timeframe for an appeal to HHS, and the method by which an appeal is made. |
| R6-8-117 | The objectives of this rule are to describe when a petition for review of an adverse hearing decision may be made to the Appeals Board, the timeframe for appeal to the Appeals Board, the method by which an appeal is made, and the requirements regarding an Appeals Board decision. |
| Article 2 | |
| R6-8-201 | The objective of this rule is to define terms used in Article 2. |
| R6-8-202 | The objective of this rule is to identify what information APS is required to obtain from a reporting source. |
| R6-8-203 | The objective of this rule is to explain who is eligible for APS services. |
| R6-8-204 | The objective of this rule is to specify where an APS worker may and may not investigate a report. |
| R6-8-205 | The objective of this rule is to explain that APS workers classify incoming communication as either “information and referral” or as “a report accepted for evaluation and investigation”. |
| R6-8-206 | The objective of this rule is to describe when and how APS investigates a report of abuse, neglect, or exploitation of a vulnerable adult. |
| R6-8-207 | The objectives of this rule are to describe the contents of an APS case plan and the responsibilities of an APS worker in creating and maintaining the case plan for an APS client. |
| R6-8-208 | The objective of this rule is to explain an adult's and a guardian's right to refuse adult protective services and actions the Department may take if an APS worker believes services are necessary and either the adult needs, but does not have, a guardian or the adult's guardian is not acting in the adult's best interest. |
| R6-8-209 | The objective of this rule is to explain the circumstances under which the Department may close a case. |
| R6-8-210 | The objectives of this rule are to explain how the Department ensures confidentiality of APS information in accordance with A.R.S. § 41-1959 and to establish a process for a person entitled to obtain information under |

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| A.R.S. § 41-1959(C) to request confidential information. |
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3. Are the rules effective in achieving their objectives?

Yes

No

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

| Rule | Explanation |
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| Article 1 | |
| R6-8-105 | This rule is ineffective in meeting the objectives because the rule does not indicate that a client or applicant may file an appeal with the Department's Office of Appeals. |
| R6-8-106 | This rule is ineffective in meeting the objectives because the rule does not reflect the current practices and requirements for filing an appeal. |
| R6-8-107 | This rule is ineffective in meeting the objectives because the rule does not reflect the current process for how the Department serves parties. |
| R6-8-109 | This rule is ineffective in meeting the objectives because the rule does not clearly state by what methods a party may submit documents to the Department. |
| R6-1-110 | This rule is ineffective in meeting the objectives because the rule does not provide adequate information regarding when a party may request a change of hearing officer. |
| R6-8-112 | This rule is ineffective in meeting the objectives because the rule does not provide adequate information for how or when a subpoena for a witness or document is issued by a hearing officer. |
| R6-8-114 | This rule is ineffective in meeting the objectives because information regarding how the Department may reschedule or continue a hearing is not currently addressed. |
| R6-8-117 | This rule is ineffective in meeting the objective because the rule does not address what kinds of decisions the Appeals Board can make. |
| Article 2 | |
| R6-8-202 | This rule is ineffective in meeting the objectives because the reporting requirement for APS cases is vague. |
| R6-8-203 | This rule is ineffective in meeting the objectives because the criteria for eligibility in the APS program are vague. |
| R6-8-205 | This rule is ineffective in meeting the objectives because it does not clearly state how the Department determines whether incoming information constitutes a communication for information and referral or qualifies as a report that is accepted for evaluation and investigation. |
| R6-8-206 | This rule is ineffective in meeting the objectives because the rule contains too much detail and is too rigid to allow APS to adapt investigation methods to changing community standards, best practices, and available resources. |
| R6-8-210 | This rule is ineffective in meeting the objectives because the information |

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| | regarding confidentiality is obsolete due to legislative changes found in A.R.S. § 14-1959 and the addition of A.R.S § 46-460. |
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4. **Are the rules consistent with other rules and statutes?** Yes No

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

| Rule | Explanation |
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| Article 1 | |
| R6-8-117 | The rule is inconsistent with statute because A.R.S. § 41-1992(C) and (D) currently states that the Appeals Board may hear any adverse decision issued by a hearing officer, whereas the current rule does not communicate this information. |
| Article 2 | |
| R6-8-210 | This rule is inconsistent with statute because subsections (A) and (B) refer to A.R.S. § 41-1959, which no longer applies to APS. Instead, A.R.S § 46-460 now governs the confidentiality and allowable disclosure of confidential information regarding any person involved with APS. Although the citation in subsection (B) of this rule is incorrect, the content of subsection (B) regarding the process for requesting confidential information is consistent with A.R.S § 46-460. |

5. **Are the rules enforced as written?** Yes No

If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issue.

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| Article1 | |
| R6-8-102 | This rule is not enforced as written because this rule only requires each area agency to maintain complaint resolution procedures. Current DES practice requires each area agency to maintain policy and procedures for filing, resolving, and appealing complaints by applicants and clients. Current practice also requires each area agency to provide written notification to an applicant or client regarding their rights and applicable procedures concerning complaints and appeals. The Department proposes to amend this rule to clarify that each area agency shall have written policies and procedures for filing, resolving, and appealing complaints and providing written notification to an applicant or client regarding rights and procedures concerning complaints and appeals. |
| R6-8-103 | This rule is not enforced as written because it does not align with the current practice of trying to resolve an applicant's or client's complaint against a service provider informally at the level at which an incident occurred. This rule also does not address an applicant's or client's right to |

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| | elevate the complaint about a service provider to the area agency if a response isn't received from a service provider or the client or applicant is dissatisfied with the informal resolution. The Department proposes to amend this rule and revise language to include procedures for filing a complaint with a service provider for informal resolution and the process for elevating the complaint about a service provider to the area agency if a response isn't received from a service provider or the client or applicant is dissatisfied with the informal resolution. |
| R6-8-104 | This rule is not enforced as written because the rule currently states a request for an administrative review from a grievant or grievant representative is directed to the Program Administrator, whereas a grievance or complaint currently goes directly to the Department's Office of Appeals. The Department proposes to amend this rule to reflect current practice. |
| R6-8-111 | This rule is not enforced as written because the rule does not reflect all of the options a hearing officer has when a party fails to appear for a hearing. The Department proposes to amend this rule to clarify that the hearing officer may either make a decision in a party's absence or dismiss the appeal when a party fails to appear. The Department also proposes to add language regarding a hearing to determine whether a party had good cause for failure to appear when the party requests to reopen an appeal. |
| R6-8-115 | This rule is not enforced as written because the Department's Office of Appeals will now accept an oral or written request for withdrawal of an appeal. The Department proposes to repeal this rule because the Department no longer requires a written request to withdraw a request for hearing. |
| Article 2 | |
| R6-8-209 | This rule is not enforced as written because the reasons for closing an APS case do not align with current practice. For example, the Department does not close a case when a client moves out of jurisdiction, it continues the investigation, especially if the alleged perpetrator is still in APS jurisdiction and may cause potential harm to others. APS also finishes the investigation when a client is admitted to a state institution or other care facility and completes the case plan. The Department proposes to repeal this rule and address reasons for closing a case in program policy. |

6. **Are the rules clear, concise, and understandable?** Yes No

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

| Rule | Explanation |
|------------------|--|
| Article 1 | |
| R6-8-101 | This rule is not clear, concise, or understandable, because the definitions include outdated terminology and some terms are not defined. The Department proposes to amend this rule by removing terms that are no longer used, adding terms that are currently used, adding an index for easy location of definitions, and revising language throughout to ensure it is easier to understand. |
| R6-8-108 | This rule is not clear, concise, or understandable as written because the rule describes how the Department calculates time using confusing and outdated language. In addition, the rule fails to specify when the Department is required to calculate time. The Department proposes to amend this rule by revising language so that it clearly and concisely explains how the Department computes time in relation to a grievance or hearing. |
| R6-8-109 | This rule is not clear, concise, or understandable as written because the rule attempts to address too many topics and includes passive voice, difficult language, and overly complex sentence structure. The Department proposes to amend this rule by revising language so that it is easier to understand. |
| R6-8-113 | This rule is not clear, concise, or understandable as written because the rule attempts to address too many topics and includes passive voice and overly complex sentence structure. The Department proposes to amend this rule by revising language so that it is easier to understand. |
| Article 2 | |
| R6-8-201 | This rule is not clear, concise, or understandable, as the rule's definitions include outdated terminology and are not in alphabetical order. The Department proposes to amend this rule by alphabetizing definitions, removing terms that are no longer used, adding terms that are currently used, adding an index for easy location of definitions, and revising language throughout to ensure it is easier to understand. |
| R6-8-208 | This rule is not clear, concise, or understandable because the rule uses overly complex sentence structure. The Department proposes to amend this rule by revising language so that it is easier to understand. |

7. **Has the agency received written criticisms of the rules within the last five years?**

Yes No

If yes, please fill out the table below:

| Commenter | Comment | Agency's Response |
|-----------|---------|-------------------|
| NA | NA | NA |

8. Economic, small business, and consumer impact comparison:

Article 1

To the Department's knowledge, no Economic Impact Statement was prepared for Article 1 when it was last amended in 1993.

Currently, there are eight area agencies in Arizona; two are tribal entities, three are not-for-profit organizations, and three are governmental organizations. 11 FTEs work in the Aging and Disability Services Administration in the Division of Aging and Adult Services, including one Program Administrator, two Program Managers, five Program Coordinators, and three Program and Project Specialists.

For State Fiscal Year (SFY) 2022, area agencies have received a total of \$91,083,248 in funding from the Supporting Older Americans Act (\$65,243,898.00), Social Service Block Grant (\$12,918,926.00), State of Arizona (\$11,910,800.00) and Discretionary grants (\$1,009,624.00).

Article 2

In an Economic Impact Statement that was submitted with the Notice of Final Rulemaking for Article 2 in 2012, the Department estimated that the rules in Article 2 would have minimal economic impact. The estimation submitted in 2012 was accurate and the revised rules have not had a significant cost impact.

APS has experienced year over year growth in new reports of abuse, neglect, and exploitation with new report growth for SFY 2021 above 17 percent year over year and projected to be at or just above 25 percent in SFY 2022 and 30 percent in SFY 2023. This breaks down to a projected 29,575 new reports in SFY 2022 and 38,448 in SFY 2023. In SFY 2022, the average caseload per investigator, as of May 2022, was 1:57. As of April 2022, APS has a total of 276 FTEs, of which 238 are field staff, 21 Central Intake Unit staff, and 14 are Quality Assurance and Policy staff.

9. Has the agency received any business competitiveness analyses of the rules?

Yes No

The Department did not receive a business competitive analysis of these rules.

10. Has the agency completed the course of action indicated in the agency's previous five-year review report?

Yes No

Please state what the previous course of action was and if the agency did not complete the action, please explain why not.

Article 1

The Department indicated in the 2017 Five-Year Review Report that it anticipated submitting a Notice of Final Rulemaking to the Governor's Regulatory Review Council (GRRC) for Article 2 in February 2019. The Department received an exception to the rulemaking moratorium from the Governor's Office on December 18, 2019. The COVID-19 Pandemic that began in early 2020 forced the Department's Division of Aging and Adult Services (DAAS) to shift resources to pandemic response efforts. The Coronavirus Aid, Relief, and Economic Security (CARES) Act and the American Rescue Plan Act (ARPA) of 2021 provided DAAS with over \$711 million in new funding, which was used to expedite the expansion of several existing programs and creation of large new programs to meet the urgent needs of Arizonans including the Emergency Rental Assistance Program (ERAP) and the Low Income Household Water Assistance Program (LIHWAP). These new and expanded programs required frequent drafting and revision of applicable policies and guidance which diverted staff away from the ongoing rulemaking process. As the pandemic has waned and staff availability stabilized, the Department renewed its commitment to rulemaking and made significant progress on these rules. The Department engaged in informal stakeholder input for the draft rules in January 2022. The Department expects to file a Notice of Proposed Rulemaking with the Secretary of State's Office in September 2022.

Article 2

The Department indicated in the 2017 Five-Year Review Report that it anticipated submitting a Notice of Final Rulemaking to GRRC for Article 2 in February 2019. The Department received an exception to the rulemaking moratorium from the Governor's Office on September 24, 2018. However, at the beginning of the 2019 legislative session, the Department put this rulemaking on hold to address the significant statutory changes to APS that became effective August 27, 2019. When work on the APS rules resumed and the new laws were being incorporated into the rules, progress was further delayed by the COVID-19 pandemic as noted above, organizational changes within DES, staffing changes, and shifting of priorities. Similarly to Article 1, described above, the Department made marked progress on these rules. The Department engaged in informal stakeholder input for the draft rules in January 2022 and expects to file a Notice of Proposed Rulemaking with the Secretary of State's Office in July 2022.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

Through analysis provided by the Department's program subject matter experts and Financial Services Administration, the Department believes that the rules impose the least burden and cost to persons regulated by these rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objectives.

Article 1

This Article governs complaint and appeal processes for services funded under a federally approved Area Plan on Aging, including complaints and appeals related to service providers and Area Agencies on Aging.

Program subject matter experts indicate that the proposed amendments to the rules identified in this report are the most cost-effective way to ensure compliance with the federal Older Americans Act, other federal statutes and regulations, and state statutes, as well as to ensure that the rules reflect current and best practices. These rules do not impose any costs to the Department or persons governed by the rules, although there may be some costs associated with addressing a complaint or appeal. Amendments proposed in this report would not increase these costs or the paperwork required for compliance.

Without these rules, there would be no clear mechanism to address complaints against service providers or Area Agencies on Aging. These rules are necessary to protect the rights of individuals who are entitled to services under the federal Older Americans Act and other federal and state laws, as well as the rights of small businesses seeking to provide services under these laws. The benefit of having clear and understandable rules about the complaint and appeal process outweigh any costs.

Article 2

This Article governs APS, which performs the critical role of investigating allegations of abuse, exploitation, and neglect of vulnerable adults in Arizona and providing those Arizonans with valuable services.

Program subject matter experts indicate that the proposed amendments to the rules identified in this report are the most cost-effective way to comply with state statutes and ensure that the rules reflect recent legislative changes and current program practice. The proposed amendments do not impose any new costs to the Department, other state agencies, or persons regulated by these rules.

Without these rules, there would be no clear system to perform the essential function of protecting Arizona's vulnerable adults. Revisions proposed in this report will provide clearer rules about the processes APS uses for receiving and evaluating allegations, as well as more effective language about how APS conducts investigations and provides service referrals. The benefit of having comprehensive rules to protect vulnerable adults outweigh any costs associated with those rules.

12. **Are the rules more stringent than corresponding federal laws?** Yes No

Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?

Article 1: Older Americans Act of 1965, as amended (42 U.S.C. 3001 et. seq); Supporting Older Americans Act of 2020 (P.L. 116-131).

Article 2: NA

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

The Department has determined that A.R.S. § 41-1037 does not apply to these rules, because the Department is not proposing a new rule or an amendment to an existing rule that requires the issuance of a regulatory permit, license, or Department authorization.

14. **Proposed course of action:**

If possible, please identify a month and year by which the agency plans to complete the course of action.

Article 1

The Department received a moratorium exception request from the Governor's Office in December 2019 for approval to engage in regular rulemaking to update Article 1 to include

updated grievance procedures. The regular rulemaking will also add definitions of terms used in Article 1, clarify program requirements to resolve complaints related to the provision of the Supporting Older Americans Act programs, address inconsistencies within the Article, and make the rules more clear, concise, and understandable to the public. The Department engaged in informal stakeholder input for the draft rules in January 2022, and the Department expects to file a Notice of Proposed Rulemaking with the Secretary of State's Office in September 2022. The Department anticipates submitting a Notice of Final Rulemaking to GRRC in December 2022.

Article 2

The Department received a moratorium exception request from the Governor's Office in September 2018 for approval to engage in regular rulemaking to update Article 2 to eliminate redundancy regarding eligibility for APS services and jurisdiction and to add content regarding the rights of vulnerable adults and alleged perpetrators in the services provided by APS. The regular rulemaking will also add definitions of terms used in Article 2, address inconsistencies within the Article, and make the rules more clear, concise, and understandable to the public. The Department engaged in informal stakeholder input for the draft rules in January 2022. The Department expects to file a Notice of Proposed Rulemaking with the Secretary of State's Office in July 2022 and submit a Notice of Final Rulemaking to GRRC in November 2022.