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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 18. Department of Economic Security**

#### **Office of Licensing, Certification, and Regulation**

##### **Article 1. Definitions**

##### **Article 7. Life-safety Inspection**

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October 30, 2015

## INTRODUCTION

Title 6, Chapter 18 covers life-safety inspection rules that apply to:

1. Foster homes, regulated under Title 6, Chapter 5, Article 58;
2. Adult developmental homes, regulated under Title 6, Chapter 6, Article 11;
3. Child developmental foster homes, regulated under Title 6, Chapter 6, Article 10;
4. Child welfare agencies operating residential group care facilities and shelter care facilities regulated under Title 6, Chapter 5, Article 74, but not outdoor experience programs; and
5. Settings providing home and community based services for individuals with developmental disabilities, regulated under Title 6, Chapter 6, Article 15.

Article 1, Definitions, contains definitions for terms used in Article 7.

Article 7, Life-safety Inspection, specifies the life-safety inspection requirements. These requirements are intended to protect the health, safety, and welfare of children and vulnerable adults from environmental or facility-based hazards.

A.R.S. § 8-451, effective May 29, 2014, created the Arizona Department of Child Safety to which the responsibilities and authority for family foster parent licensing were transferred.

The Arizona Department of Economic Security plans to consolidate rules relating to life-safety inspection into Title 6, Chapter 6, Developmental Disabilities. After the Arizona Department of Economic Security consolidates the life-safety inspection rules into Title 6, Chapter 6, and the Arizona Department of Child Safety promulgates its life-safety inspection rules, the Arizona Department of Economic Security plans to repeal the rules in Title 6, Chapter 18.

## **ANALYSIS OF RULES**

### **A. STATUTORY AUTHORITY**

General: A.R.S. §§ 8-503(A)(4), 36-554(A)(2-10) and (C)(6), and 41-1954(A)(3)

Specific: A.R.S. §§ 8-504(A), 36-592(A), (B), (D), and (F)

### **B. OBJECTIVE**

#### **ARTICLE 1. DEFINITIONS**

##### **R6-18-101 Definitions**

The objective of this rule is to define 16 terms used in Article 7. The purpose of this rule is to help the public in understanding the terms used throughout this Chapter.

#### **ARTICLE 7. LIFE-SAFETY INSPECTION**

##### **R6-18-701. Application**

The objective of this rule is to identify the entities regulated by this Article. The purpose of this rule is to identify the entities to which the Article applies.

##### **R6-18-702. General Condition and Cleanliness of the Setting**

The objective of this rule is to establish the minimum standards for cleanliness and the general condition of a setting used to provide regulated care. It specifies items to consider when inspecting premises for cleanliness.

##### **R6-18-703. Safeguarding of Hazards**

The objective of this rule is to identify the safeguards care providers are required to implement, to reduce the risk of hazards to children and vulnerable adults in a regulated setting. It specifies hazards to consider when inspecting premises for safety.

#### **R6-18-704. Storage of Medication**

The objective of this rule is to require the locked storage of all medications, to protect children and vulnerable adults from unauthorized access to potentially dangerous substances. It specifies the ways in which various medications must be stored.

#### **R6-18-705. Safe Appliances**

The objectives of this rule are to ensure the availability of specific appliances within a regulated setting, and to ensure such appliances are in safe working order. It identifies the requirements of these appliances.

#### **R6-18-706. Electrical Safety**

The objectives of this rule are to ensure the availability of specific electrical systems within a regulated setting, and to ensure such systems are in safe working order. It identifies the specifics of electrical system requirements.

#### **R6-18-707. Plumbing Requirements**

The objectives of this rule are to ensure the availability of specific plumbing systems within a regulated setting, and to ensure such systems are in safe working order. It identifies the specifics of plumbing system requirements.

#### **R6-18-708. Fire Safety**

The objectives of this rule are to ensure the availability of specific fire safety equipment and development of procedural safeguards, to reduce the risk of fire hazards to children and vulnerable adults. It specifies items to consider when inspecting premises for fire safety.

#### **R6-18-709. Pool Requirements**

The objective of this rule is to require safeguards to reduce the risk of drowning to children and vulnerable adults. It specifies items to consider when inspecting premises for pool safety.

## **C. EFFECTIVENESS**

With the exception of the issues raised below, the rules in Chapter 18 are effective in meeting their objectives.

### **R6-18-703**

R6-18-703(6) prohibits OLCR regulated settings from having animals that pose a hazard due to behavior or disease. Without further explanation, the rule has been difficult to enforce and has created frustration for care providers. For example, care providers have inquired about whether certain breeds of dogs, reptiles, and exotic pets are permissible in a licensed setting. The rule would be more effective if it is amended to clarify the specific requirements and limitations.

### **R6-18-705**

R6-18-705 pertains to the operation and safety of appliances in the licensed setting, but fails to prohibit the indoor use of appliances intended solely for outdoor use. This rule would be more effective if this additional provision were included in the rule.

### **R6-18-707**

R6-18-707(B) requires OLCR to collect a sample of water for testing by a state-certified laboratory for all homes with a non-municipal source of water. Having the OLCR inspector collect water samples has proven to be duplicative in most cases. Most settings with a non-municipal source of water already have evidence of water testing by a state-certified laboratory, but the rule, as written, doesn't take this possibility into consideration. The rule would be more effective if it is amended to allow consideration of and acceptance of evidence of existing water test results.

R6-18-707(D) specifies a maximum hot water temperature, but does not set a minimum hot water temperature. As a result, it is possible for a setting that does not have any hot water to pass the inspection, even though the service may include food preparation and personal care. The rule would be more effective if the language is added to require sanitary procedures for such settings, by requiring hot water or other sanitation solutions.

R6-18-707(E) requires a shower or tub for every ten persons receiving care; however, these regulations also apply to non-residential environments, which may not include personal care services. The rule would be more effective if the language is added to exempt non-residential environments from this requirement.

#### **R6-18-709**

R6-18-709(A) requires rescue equipment for pools deeper than 4 feet. The required equipment (shepherd's crook and ring buoy) has a collective cost of approximately \$100 and can be cost-prohibitive for some applicants. There is no empirical evidence that the rescue equipment is effective in protecting or saving lives in residential pools.

R6-18-709(B) requires a fenced enclosure for swimming pools. Questions are frequently raised by care providers regarding whether certain types of fencing are permissible, suggesting that the rule language may require clarification. Additionally, the rule implies but does not explicitly state that the fence must remain intact throughout the term of the license. The rule would be more effective if it is amended to clarify the enclosure requirements.

#### **D. CONSISTENCY**

The rules in Chapter 18 are generally consistent with state and federal law, as well as Department policy and procedures.

**E. ENFORCEMENT POLICY**

The Department enforces the rules in Chapter 18 to the extent that does not interfere with the jurisdiction of the newly established Arizona Department of Child Safety.

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

The rules in Chapter 18 are generally clear, concise, and understandable, except as explained in item C above.

**G. WRITTEN CRITICISMS**

The Department has not received any written criticism regarding the rules in Chapter 18.

**H. ECONOMIC IMPACT COMPARISON**

An Economic Impact Statement was not required for the original rulemaking in Chapter 18, filed by Notice of Exempt Rulemaking, 11 A.A.R. 3501, effective October 24, 2005. Major changes have occurred since the 2010 rules review due to the creation of the Department of Child Safety (DCS) which is now assigned responsibility in licensing foster homes and other child welfare programs that no longer fall under the Title 6 purview.

OLCR is authorized by Arizona Revised Statutes to license child developmental homes and adult developmental homes and to certify home and community based services for individuals with developmental disabilities. The purpose of regulating DES developmental homes and contracted care providers is to protect vulnerable children and adults receiving services through the establishment and enforcement of safe standards for care.



The Department contracts with private agencies and individuals to provide a variety of services to children and vulnerable adults, including residential care in foster, developmental and group home environments; attendant care; day treatment and training; habilitation; respite care; and therapies, including respiratory, occupational, physical, and speech therapy. The contracts for these services are coordinated through the Division of Developmental Disabilities (DDD).

One component of licensing and certification is the inspection of homes and facilities used for the provision of services. The Regulatory Support Unit within DDD OLCR schedules and conducts these inspections. The Arizona Administrative Code also requires periodic inspections for renewal licensure, relocation of licensed settings, and for significant new construction. Inspections directly impact the health and well-being of clients. Additionally impacted are contracted agencies, individual care providers, and other divisions within DES (DDD).

OLCR is funded through legislative appropriations. No fees are currently charged for licensing, certification, or inspections conducted by OLCR.

FY 2015 expenditures reflect inspections done since OLCR became an entity within DDD and separate from the DCS child welfare licensing program, while FY 2010 expenditures reflect inspections performed while the units were combined. This explains the significant change from FY 2010 to FY 2015.

**Estimated expenditures for the Regulatory Support Unit**

	FY 2010	FY 2015
<b>Expenditures:</b>		
Personnel Related	362,066	268,403
Workspace, Equipment, Services	8,058	5,370
Travel/Vehicles	18,817	1,948
Total	388,941	275,721
<b>Inspection Data:</b>		
SOGHs and ICFs*	NA	113
Initial Inspections	1,722	351
Re-inspections	NA	541
Renewal	1,040	510
Relocation	608	155
Special (new construction/pool install, etc.)	126	33
Total	3,496	1703

\*OLCR added inspections of State Operated Group Homes (SOGHs) and Independent Care Facilities (ICFs) beginning Fall 2015 at the request of the DDD Assistant Director.

**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 FIVE-YEAR REVIEW REPORT**

In the previous Five-year Review Report, approved by the Council on January 11, 2011, the Department had indicated that it planned to submit the Notice of Final Rulemaking to the Governor's Regulatory Review Council by January 2013.

On December 13, 2011, the Department sent a request to the Governor's Office for an exception from the regulatory moratorium to repeal Chapter 5, Articles 58 and 59; repeal Chapter 6, Articles 10 and 11; and adopt new rules in Chapter 18 pertaining to the licensing of foster and developmental homes.

On January 13, 2014, the Governor's Executive Order 2014-01 established a separate Division of Child Safety and Family Services; thereby separating the Child Welfare licensing functions of the Office of Licensing, Certification and Regulation from the Developmental Disabilities licensing functions.

A.R.S. § 8-451, effective May 29, 2014, created the Arizona Department of Child Safety to which the responsibilities and authority for family foster parent licensing were transferred as was the responsibility and authority for oversight of Child Welfare Agencies operating Residential Group Care Facilities.

On January 5, 2015, the Department's rulemaking was put on hold as a result of the moratorium imposed by the Governor's Executive Order 2015-01. On April 2, 2015, the Department sent a request to the Office of the Governor for an exception to proceed with consolidating rules relating to life-safety inspection into Title 6, Chapter 6, Developmental Disabilities. Based on guidance from the Office of the Governor, on September 2, 2015, the Department submitted a revised request. At the time of submission of this Five-year Review Report, the Department is anticipating the response from the Office of the Governor on the revised request.

**K. DETERMINATION OF BURDEN AND COSTS**

The Department believes that, with the changes recommended in this Report, the probable benefits of the rules will outweigh within this state the probable costs of the rules, and the rules will impose the least burden and costs to persons regulated by these rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objectives.

**L. CORRESPONDING FEDERAL LAW**

There is no corresponding federal law specific to Chapter 18.

**M. COMPLIANCE WITH A.R.S. § 41-1037**

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 agency authorization.

**N. PROPOSED ACTION**

After the Arizona Department of Economic Security consolidates the life-safety inspection rules into Title 6, Chapter 6, and the Arizona Department of Child Safety promulgates its life-safety inspection rules, the Arizona Department of Economic Security plans to repeal the rules in Title 6, Chapter 18.