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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**

## **5-Year Review Report**

### **Title 6. Economic Security**

#### **Chapter 5. Department of Economic Security**

##### **Social Services**

###### **Article 24.**

Appeals and Hearings

###### **Article 50.**

Child Care Resource and Referral System

###### **Article 55.**

Child Protective Services

###### **Article 58.**

Family Foster Parent Licensing Requirements

###### **Article 59.**

Group Foster Home Licensing Standards

###### **Article 60.**

Comprehensive Medical/Dental Program for Foster Children

**June 30, 2016**

**Revised: October 6, 2016**

## **A. GENERAL**

A.R.S. § 8-451, effective May 29, 2014, created the Department of Child Safety (DCS) to which the responsibilities and authority for the functions governed by A.A.C., Title 6, Chapter 5, Articles 55, 58, 59, and 60 were transferred. Therefore, the rules reviewed in this report are limited to the rules which govern actions of and parties regulated by the Department of Economic Security (Department) as contained in A.A.C., Title 6, Chapter 5, Articles 24 and 50.

The rules in Article 24 set forth administrative appeal and hearing procedures and are used by the Department to govern appeal and hearing procedures with respect to child care assistance.

The rules in Article 50 specify requirements for a statewide child care resource and referral system. These rules specify the procedures for this program, including the types of child care programs that are eligible to be listed with Child Care Resource and Referral (CCR&R), the items that must be submitted to the Contractor, the agency with which the Department contracts for the provision of referral services, and who may be excluded from the CCR&R database. In addition, the rules explain the referral process, which includes the information collected from consumers by the Contractor, the type of information the Contractor must provide to each consumer and requirements for recording complaints against child care providers.

## **B. RULES NOT REVIEWED IN THIS REPORT**

The Department did not review the rules in the following Articles, and intends that they expire because they concern functions of the Department of Child Safety and have been replaced by rules that have been promulgated by the Department of Child Safety:

Article 55. Child Protective Services

Article 58. Family Foster Parent Licensing Requirements

Article 59. Group Foster Home Licensing Standards

Article 60. Comprehensive Medical/Dental Program for Foster Children

## II. Analysis of Rules

### A. Statutory Authority

**General Authority:** A.R.S. § 41-1954(A)(3)

**Specific Authority:**

Article 24: A.R.S. §§ 46-804 and 46-809

Article 50: A.R.S. §§ 41-1967, 41-1967.01, 46-802(4) through 46-802(6), and  
46-809(3)

### B. Objective

#### **Article 24**

R6-5-2404. Basis for a hearing

The objective of this rule is to set forth the Department actions which may be appealed. The purpose of this rule is to clarify and explain which Department actions may be appealed and which may not.

R6-5-2405. Hearing process

The objective of this rule is to explain the manner in which hearings are scheduled and conducted. The purpose of this rule is to familiarize the parties with the process used, to define terms, and enable participation.

## **Article 50**

### R6-5-5001. Definitions

The objective of this rule is to set forth uniform definitions for key terms used in Article 50. The purpose of this rule is to ensure the public understands the terms used in Article 50.

### R6-5-5002. Provider Participation Requirements

The objective of this rule is to specify information that a child care provider must submit to be considered for inclusion in the CCR&R database and to specify procedures that the child care resource referral contractor will follow before adding a provider to the database. The purpose of this rule is to ensure that the child care resource and referral contractor obtains information necessary to establish the child care resource and referral database.

### R6-5-5003. Notification of Changes

The objective of this rule is to describe reporting requirements for child care providers listed in the CCR&R database. The purpose of this rule is to ensure that the database is maintained with current information at all times.

### R6-5-5004. Referrals Not Guaranteed

The objective of this rule is to explain that referrals are not guaranteed for each participating provider. The purpose of this rule is to ensure that consumers receive information based on their needs and not based on participating providers' economic benefit.

#### R6-5-5005. Referral Process

The objective of this rule is to describe the information needed from both providers and consumers and to give guidance via a step-by-step referral process. The purpose of this rule is to ensure that the consumers receive high quality referral service and educational information.

#### R6-5-5006. Monitoring; Complaint Recording and Reporting Requirements

The objective of this rule is to describe the monitoring and investigation procedures for each type of child care provider. It also explains the contractor requirements pertaining to complaints and outlines the process to be followed when a complaint is filed. The purpose of this rule is to ensure that each complaint is communicated to the appropriate regulatory agencies and handled in precise manner within the required time period.

#### R6-5-5007. Provider Listing Status

The objective of this rule is to describe the criteria that require changes in provider listing status in the CCR&R database, and the timeframes and procedures pertaining to different types of child care provider groups. The purpose of this rule is to ensure that consumers do not receive referrals for a child care provider placed on an adverse action.

#### R6-5-5008. Provider Exclusion or Removal

The objective of this rule is to establish the grounds for exclusion or removal of participating child care providers from the CCR&R database. This section also explains the procedures for reinstatement. The purpose of this rule is to ensure that the CCR&R database lists only the child care providers who meet the required qualifications.

#### R6-5-5009. Administrative Review Process

The objective of this rule is to outline the process to follow when the Department receives information indicating that a participating child care provider's listing status may change. The purpose of this rule is to ensure a consistent administrative review process is in place.

The objectives of this rule are to outline:

1. The process for the Department to follow to notify the provider of a change in listing status and what to include in the notice;
2. The timeframes and process for the provider to follow to request an administrative review;
3. The timeframe and who from the Department conducts the administrative review; and
4. The procedures for the Department to follow in notifying the provider of the results of the administrative review.



It further stipulates the provider may appeal the Department's administrative review decision. The purpose of this rule is to ensure a consistent administrative review process is in place.

#### R6-5-5010. Administrative Appeal Process

The objective of this rule is to specify the timeframe during which the Department's administrative review decision can be appealed and to explain required procedures for both providers and the Department. The purpose of this rule is to ensure a consistent administrative appeal process is in place.

### **C. Effectiveness**

#### **Article 24**

The rules in Article 24 could be more effective if combined with other Department rules concerning appeals and hearings within a separate chapter for this subject. The benefits and possible structure of such a revision will be evaluated as part of any future rulemaking pertaining to Article 24.

R6-5-2404 is effective because it clearly states those actions taken by the Department that may be appealed.

R6-5-2405 is not effective because it references programs, including child welfare licensing and foster home licensing, that are no longer subject to the rule and establishes procedures that are inconsistent with controlling statutory authority, including A.R.S. §§ 41-1061 and 41-1992.

### **Article 50**

The Department believes the rules in Article 50 are effective, in that they are meeting their objectives, and are consistent with federal and state law, current program policy, and procedures.

### **D. Consistency**

Because of the age of the rules there are incorrect statutory references in the Articles reviewed. The Department plans to update the references.

### **Article 24**

R6-5-2404 is consistent with state statutes and rules as listed below.

A.R.S. § 41-1061(A)

A.R.S. § 41-1991 Appeals; procedures

A.R.S. § 46-804. Appeal

A.A.C. R6-5-4924(A). Appeals

There are no federal statutes and rules that govern the subject matter of this Article.

R6-6-2405 is inconsistent with A.R.S. § 41-1061(A), and Department policy and practice concerning advance notice of hearings and administrative review of the hearing officer's decision. A.R.S. § 41-1061(A) provides for 20 days' notice of hearing. R6-5-2405 provides minimum of 15 days' notice of hearing.

### **Article 50**

The rules in Article 50 are consistent with state law and current program policy and procedures as indicated below:

45 CFR § 98.51 Activities to improve the quality of child care

A.R.S. § 41-1967. Child care resource and referral system; immunity.

The U.S. Health and Human Services Department published a Notice of Proposed Rulemaking on December 24, 2015. This proposed rule makes changes to Child Care Development Fund regulations to detail provisions of the Child Care and Development Block Grant Act of 2014 in order to help parents make informed consumer choices and access information to support child development. The final regulations were published on September 30, 2016. The Department is in the process of analyzing the final regulations and will incorporate any necessitated rule changes within a future rulemaking for Article 50.

## **E. Enforcement Policy**

### **Article 24**

The rules in Article 24 are consistently enforced by the Department to the extent that they are consistent with statute.

### **Articles 50**

The Department enforces these rules to the extent that they do not conflict with operational practice as identified in Section F below.

## **F. Clear, Concise, and Understandable**

### **Article 24**

R6-5-2404. Basis for a Hearing

This rule is clear, concise, and understandable.

R6-5-2405 Hearing Process

This rule is not clear, concise, and understandable. The rule attempts to address too many topics and it often uses passive voice or other archaic syntax. The rule would be clearer if it were rewritten in simpler, straight-forward language.

### **Article 50**

The Department believes that the rules in Article 50 are clear, concise, and understandable with the following exceptions:

R6-5-5009. Administrative Review Process

This rule is not clear, concise, and understandable as it references the Site Code (S.C.) in the mailing address, which may be confusing to the public as S.C. numbers have been replaced by Mail Drop numbers.

R6-5-5010. Administrative Appeal Process

This rule is not clear, concise, and understandable as it references the Site Code (S.C.) in the mailing address, which may be confusing to the public as S.C. numbers have been replaced by Mail Drop numbers.

References to “Child Protective Services” throughout Article 50 detract from the clarity, conciseness, and understandability of the Article as they do not reflect the 2014 transfer of child safety functions to the Department of Child Safety, which may be confusing to the public.

**G. Written Criticisms**

The Department has not received any written criticism regarding the rules in Chapter 5, Articles 24 and 50.

## **H. Economic Impact Comparison**

### **Article 24**

The rules in Article 24 were made in 1978 and no economic impact statement was prepared the time of the rulemaking.

Appellate Services Administration (ASA) is authorized by Arizona Revised Statutes to establish appeal tribunals to hear and decide appeals for adverse actions described in Article 24.

ASA is funded through both federal and state appropriations. The estimated total costs incurred by ASA in SFY 2015 in connection with the Article 24 hearings at the Office of Appeals and the Appeals Board are \$1,117.32.

### **Article 50**

Because the rules in Article 50 were filed under an exception from formal rulemaking procedures, the Department did not prepare an Economic Impact Statement for these rules. These rules assist the public in identifying prospective child care providers, and provide child care providers with an opportunity to advertise their services to prospective clients.

The Department of Economic Security, Child Care Administration contracted with two agencies until June 2015 to provide services to consumers and child care providers throughout Arizona. Starting SFY 2016, the Department reduced the

number of contractors to one due to a recent decrease in the phone referrals and an increase in the web referrals.

Consumers can call a toll free number throughout Arizona to receive referrals to all types of child care providers or receive referrals on-line through the CCR&R website. Information on child care supply and demand is provided, provider training is delivered, and detailed information and consumer education materials is provided to consumers to assist them in what to look for in selecting quality child care.

In SFY 2015, total funding for CCR&R services was \$2,131,773.14.

Administratively, the Child Care Administration funds a portion of one full-time position to oversee contract administration, reporting requirements, and to provide technical assistance to contractors on all aspects of the service.

Collectively, approximately 20 FTEs are funded at the agencies to provide referral and recruitment services, outreach, internet maintenance, training administration, and management operations. A total of 4,568 requests for child care referrals were processed by telephone in SFY 2015, impacting 8,189 children in need of care. In addition, approximately 10,346 consumers received child care referrals on-line through the CCR&R website.

During the final quarter of SFY 2015, there were 3,154 providers listed in the CCR&R database. Of these, 2,006 were child care centers, and 1,148 were family care providers. Of the 2,006 child care centers, 1,533 are contracted with DES to provide child care services to families receiving child care subsidies.

### **I. Business Competitive 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**

In the 2011 Five-Year Review Report approved by Council, the Department indicated that it was working closely with the Governor's Office to evaluate its priorities and workload, and that it may request an exception from the moratorium to proceed with rulemaking to address the needed changes identified in the report with respect to Article 24. The Department anticipated submitting this rule package to the Governor's Regulatory Review Council within 18 months after the expiration of the moratorium, or after being granted an exception from the moratorium.



The moratorium that was in place expired and was replaced by a series of subsequent regulatory moratoriums. Within the Department's priorities and workload, rulemaking to address changes to Article 24 never rose to a level to request a moratorium exception and no changes have been made to Article 24 since the previous Five-year Review Report.

The Department indicated that it had not planned to take any action on the rules in Article 50.

#### **K. Determination of Burden and Costs**

With the amendments proposed in this report, the Department believes that the rules would 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**

The rules in Articles 24 and 50 are neither more burdensome than, nor in conflict with, corresponding federal statutes and regulations.

There are no federal statutes and rules that govern the subject matter of Article 24. The current rules in Article 50 are neither more burdensome than, nor in

conflict with, corresponding federal statutes and regulations as stated in 45 CFR § 98.51 Activities to improve the quality of child care.

The U.S. Health and Human Services Department published a Notice of Proposed Rulemaking on December 24, 2015. This proposed rule makes changes to Child Care Development Fund regulations to detail provisions of the Child Care and Development Block Grant Act of 2014 in order to help parents make informed consumer choices and access information to support child development. The final regulations were published on September 30, 2016. The Department is in the process of analyzing the final regulations and will incorporate any necessitated rule changes within a future rulemaking for Article 50.

#### **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**

### **Article 24**

All Department rulemaking was placed on hold as a result of Executive Order 2016-03 that became effective on February 10, 2016. In response, the Department requested permission to proceed with sixteen high priority rulemakings that align with the justifications detailed in the Executive Order. As of June 28, 2016, the Department has received approval to proceed with fifteen of the rulemakings. The amendments to Article 24 were not included in the Department's initial request. The Department will keep the amendments to Article 24 on its list of rulemakings to consider within the constraints of the Executive Order and the context of its rulemaking priorities.

### **Article 50**

The Department does not plan to take any action on the rules in Article 50, except for the statutory reference updates referenced in the "Consistency" section, which will also be considered within the constraints of the Executive Order and the context of its rulemaking priorities.

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