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# **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 5, Articles 24 and 50  
Five-Year Review Report**

**1. Authorization of the rule by existing statutes**

General Statutory Authority:

**Article 24:** A.R.S. § 41-1954(A)(3).

**Article 50:** A.R.S. §§ 41-1954(A)(3) and 46-134(10).

Specific Statutory 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).

**2. The objective of each rule**

Rule	Objective
<b>Article 24</b>	
R6-5-2404	The objective of this rule is to establish the reasons for which a customer or provider of services provided by the Child Care Administration (CCA) or Achieving a Better Life Experience (ABLE) programs within the Department of Economic Security (Department) may be granted a hearing. As written, this rule also applies to child welfare licensing and foster home licensing, which are currently under the jurisdiction of the Department of Child Safety (DCS).
R6-5-2405	The objective of this rule is to describe the hearing process for a customer or provider of services of CCA or ABLE programs within the Department of Economic Security (Department), as well as child welfare licensing and foster home licensing, which are in practice currently under the jurisdiction of DCS.
<b>Article 50</b>	
R6-5-5001	The objectives of this rule are to define terms used in Article 50, which provides requirements for Child Care Resource & Referral (CCR&R) contractors and child care providers regarding the CCR&R database, describes requirements for child care customers, and requires contractors to provide educational information to customers.
R6-5-5002	The objectives of this rule are to ensure a clear understanding of the information that child care providers must submit to be considered for inclusion in the Child Care Resource & Referral (CCR&R) database and to specify procedures that the CCR&R contractor must follow prior to adding a provider to the database.

R6-5-5003	The objectives of this rule are to ensure a clear understanding of the reporting requirements for child care providers listed in the CCR&R database and to ensure that the database is maintained with current information.
R6-5-5004	The objectives of this rule are to ensure that referrals provided to a customer are based on the customer's child care needs and to make it clear that a provider who is included in the CCR&R database is not guaranteed referrals.
R6-5-5005	The objectives of this rule are to ensure that customers receive high quality referral service and educational information and provide a clear understanding of the information that customers must provide to the contractor in order to receive a referral as well as the information the contractor must provide to customers.
R6-5-5006	The objectives of this rule are to ensure a clear understanding of the monitoring and investigation procedures for each type of child care provider, to provide contractor requirements pertaining to complaints, and to specify the process followed when a complaint is filed, so that each complaint is communicated to the appropriate regulatory agencies and is handled in a precise manner within the required time period.
R6-5-5007	The objectives of this rule are to ensure a clear understanding of how changes in provider listing statuses occur in the CCR&R database, based on specified criteria, to specify the timeframes and procedures pertaining to changing provider listing statuses, and to ensure that customers do not receive referrals to a child care provider placed on an adverse action.
R6-5-5008	The objectives of this rule are to establish the grounds for exclusion or removal of participating child care providers from the CCR&R database, ensuring that the database lists only child care providers who meet the required qualifications, and explains the procedures for child care provider reinstatement.
R6-5-5009	The objectives of this rule are to ensure a clear understanding of the Department's process when it is in receipt of information indicating that a participating child care provider's listing status may change and to establish a consistent administrative review process.
R6-5-5010	The objectives of this rule are to ensure a clear understanding of the time frame during which the Department's administrative review decision can be appealed and to provide procedural requirements for both providers and the Department in order to establish a consistent administrative appeal process.

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
Article 24	

R6-5-2405	This rule 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.
<b>Article 50</b>	
R6-5-5002	This rule is not effective because it refers to Child Protective Services (CPS) substantiating that neither a provider nor anyone providing care in the provider's home has had a child abuse or neglect investigation, which is now the responsibility of Arizona Department of Child Safety (DCS) in accordance with A.R.S. § 8-451.
R6-5-5007	This rule is not effective because a provider's listing status on the CCR&R is determined based on information provided by CPS, which is now the responsibility of DCS in accordance with A.R.S. § 8-451.
R6-5-5010	This rule is not effective because the Department's actions in reference to removal or exclusion from the CCR&R refer to failure to clear a CPS background check, which is now the responsibility of DCS in accordance with A.R.S. § 8-451.

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.*

<b>Rule</b>	<b>Explanation</b>
<b>Article 24</b>	
R6-5-2404	This rule is not consistent with A.R.S. § 41-1061(A) because the statute provides that the appeal rights are for all parties in a "contested case" including when an applicant or recipient disagrees with the effective date of an approval or the level of an approval whereas the rule provides a narrower criteria of specific reasons for which a hearing is granted.
R6-5-2405	This rule is not consistent with A.R.S. § 41-1061(A) because the statute provides for a minimum notice of 20 days prior to a hearing, whereas this rule provides for a minimum notice of 15 days prior to a hearing.
<b>Article 50</b>	
R6-5-5001	This rule's definitions are not consistent with current statutes and does not recognize the provisions of A.R.S. § 8-451, which created DCS and transferred the responsibilities and authority of CPS to DCS.
R6-5-5002	This rule is not consistent with 45 CFR 98.43 and A.R.S. § 46-811 because the statutes require providers to receive clearance from the Department that an individual and individual's household members have cleared a criminal background check, which is not currently stated in the rule.
R6-5-5005	This rule is not consistent with customer and provider education requirements regarding the provision of information about available financial assistance, as mandated in 45 CFR 98.33 because this rule does not address educational information that must be provided to providers.

R6-5-5006	This rule is not consistent with parental complaint requirements specifying a centralized complaint reporting process, as mandated in 45 CFR 98.32 because this rule does not require the state to establish a hotline or similar mechanism for customers to submit complaints about child care providers.
R6-5-5008	This rule is not consistent with criminal background check requirements regarding adult household members, as mandated by 45 CFR 98.43 and A.R.S. § 46-811 because this rule does not address required criminal background checks.

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.*

<b>Article 24</b>	
R6-5-2405	This rule is not enforced as written because it refers to child welfare licensing and foster home licensing, which are now under the jurisdiction of the Department of Child Safety.
<b>Article 50</b>	
R6-5-5003	This rule is not enforced as written, as neither the Department nor the contractor monitor provider activities in the manner indicated in R6-5-5006(A). The issue is currently addressed via contractor outreach, in which the contractor periodically contacts providers to verify that information is current and to check for any changes to the information or statement that R6-5-5002(A) requires. The Department proposes to amend the rule by revising language that requires contractor outreach activities to include accuracy checks of current information, to align with current practice.
R6-5-5006	This rule is not enforced as written, as 45 CFR 98.32 specifies that the State shall designate a centralized complaint reporting process. Currently the contractor receives and records complaints in compliance with 45 CFR 98.32, rather than directing a complainant to another agency as the rule currently states. The Department proposes to amend the rule to align with federal requirements.
R6-5-5007	This rule is not enforced as written, as each regulatory agency informs the contractor of the suspension, rather than the Department informing the contractor as stated in the rule. The Department proposes to amend the rule to state “When a Contractor learns that a Regulatory Agency has suspended a Regulated Provider’s license, certificate, or Alternate Approval, the Contractor shall change the Provider’s Listing Status from Active Listing to Inactive Listing, using the process in R6-5-5010.”

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
<b>Article 24</b>	
R6-5-2405	This rule is not clear, concise, or understandable, as written because the rule attempts to address too many topics and often includes passive voice, difficult language, and an overly complex sentence structure. The Department proposes to amend this rule by revising language so that it is easier to understand.
<b>Article 50</b>	
R6-5-5001	This rule is not clear, concise, or understandable, as the rule's definitions include outdated terminology. The Department recommends that definitions in this rule be amended to align with current terminology.
R6-5-5002	This rule is not clear, concise, and understandable, as the rule includes references to "Child Protective Services", now under the authority of DCS. The Department proposes to amend "Child Protective Services" to "DCS" or "Department of Child Safety".
R6-5-5006	This rule is not clear, concise, and understandable, as the rule discusses an "Over-ratio Referral Form" which is no longer used, and includes references to "Child Protective Services", now under the authority of DCS. The Department proposes to amend the method by which contractors refer over-ratio complaints to the Department of Health Services, and that the term "Child Protective Services" be amended to "DCS" or "Department of Child Safety".
R6-5-5007	This rule is not clear, concise, and understandable, as the rule includes the outdated term, "Information Only Listing" and references to "Child Protective Services", now under the authority of the Department of Child Safety. The Department proposes to amend "Information Only Listing" to "No Referral Status" and "Child Protective Services" to "DCS" or "Department of Child Safety".
R6-5-5009	This rule is not clear, concise, and understandable, as components of the mailing address to which written requests are directed have changed and are no longer accurate. The Department proposes to amend language to direct written requests to the Child Care Administration at the main DES office so that the rule remains accurate regardless of any future address changes.
R6-5-5010	This rule is not clear, concise, and understandable, as components of the mailing address to which written requests are directed have changed and so are no longer accurate. The Department proposes to amend the rule to direct written requests to the Child Care Administration at the main DES office so that the rule remains accurate regardless of any future address changes.

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
N/A	N/A	N/A

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

**Article 24**

The rules in Article 24 were adopted in 1978. To the Department's knowledge, no economic impact statement was prepared at the time of this rulemaking.

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

The Appellate Services Administration is funded through both federal and state appropriations.

In State Fiscal Year (SFY) 2020, the estimated total costs incurred by the Appellate Services Administration, in connection with the Article 24 hearings at the Office of Appeals and the Appeals Board, were approximately \$1,000.00.

**Article 50**

The rules in Article 50 were amended by exempt rulemaking on July 1, 2002. To the Department's knowledge, no economic impact statement was prepared at the time of this rulemaking.

The Child Care Administration contracts with Child & Family Resources, a community-based organization, to provide child care related services to both customers and child care providers through CCR&R. CCR&R provides parents and families referrals to all types of child care providers, both on the CCR&R website and via a toll-free number. Other services include the provision of information relating to child care services in general, including data on child care supply and demand; customer education materials to assist in selecting quality child care; and outreach services to local communities. CCR&R also establishes and maintains a child care home provider registry for family child care providers who are not regulated by the State, but who are lawfully operating under State law. This service includes technical assistance to existing and prospective child care providers.

In SFY 2020, total funding for CCR&R services was \$1,120,257.00.

The Department funds:

- Approximately 14 full-time equivalents (FTEs), allowing for the contractor to provide

referral, recruitment services, outreach, internet maintenance, training administration, and management operations; and

- A portion of one FTE position to oversee contract administration and reporting requirements and to provide technical assistance to contractors on all aspects of the service.

During the final quarter of SFY 2020, there were 2,982 providers listed in the CCR&R database. Of these, 2,271 were child care centers, and 685 were family care providers. Of the 2,271 child care centers, 1,205 were contracted with the Department to provide child care services to families receiving child care subsidies.

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

Yes  No

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

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 24**

No course of action was indicated in the Department's previous Five-Year Review Report.

**Article 50**

No course of action was indicated in the Department's previous Five-Year Review Report, except for the Department's intention to consider statutory reference updates within the constraints of the moratorium on rulemaking declared in Executive Order 2018-02.

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.

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 24:** There are no federal statutes that govern the subject matter.

**Article 50:** The Child Care and Development Block Grant at 42 U.S.C. 9857 et seq, and the Child Care and Development Fund at 45 CFR 98.

The Department has determined that the rules in Chapter 5, Articles 24 and 50 are not more stringent than the corresponding federal authorities cited.

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 24**

The Department will submit a moratorium exception request to the Governor's Office upon approval of this report to engage in expedited rulemaking to update the criteria in R6-5-2404 for which a hearing shall be granted to a person and to remove references to child welfare licensing and foster home licensing in R6-5-2405, which are no longer subject to Article 24 in accordance with A.R.S. § 8-451. The rulemaking will also add definitions of terms used in Article 24, address inconsistencies overall, and make the rules more clear, concise, and understandable to the public. If the exception request is approved, the Department anticipates submitting a Notice of Final Expedited Rulemaking to the Council by May 2022.

**Article 50**

On September 24, 2018, the Governor's Office approved an exception to the moratorium on rulemaking declared in Executive Order 2018-02, allowing the Department to conduct rulemaking to incorporate changes resulting from the Child Care and Development Block Grant Act, as well as the associated federal regulations, address inconsistencies overall, and to make the Article more clear, concise, and understandable to the public. The Department

anticipates submitting a Notice of Final Expedited Rulemaking to the Council as soon as possible, but no later than June 2022.