

-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 5, Article 49 - Child Care Assistance

Five-Year Review Report

1. Authorization of the rule by existing statutes

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

Specific Statutory Authority: A.R.S. §§ 46-802 through 46-805, and 46-809.

2. The objective of each rule

Rule	Objective
R6-5-4901	The objective of this rule is to define terms specific to Article 49.
R6-5-4904	The objective of this rule is to explain the ways an individual can access Child Care Assistance through DES, including which applicants require a referral to receive Child Care Assistance and those who may apply of their own initiative.
R6-5-4905	The objective of this rule is to describe the initial eligibility interview that the Department conducts after receiving an application for Child Care Assistance from an applicant.
R6-5-4906	The objective of this rule is to describe when and how the Department verifies information provided by an applicant.
R6-5-4907	The objective of this rule is to describe how a client may withdraw a Child Care Assistance application.
R6-5-4908	The objective of this rule is to describe the actions DES takes to approve or deny a Child Care Assistance application.
R6-5-4909	The objective of this rule is to explain how the Department reviews each client's eligibility factors at least once every 12 months.
R6-5-4910	The objective of this rule is to explain under what conditions and timeframe the Department may reinstate a client's Child Care Assistance after the Department has terminated assistance.
R6-5-4911	The objective of this rule is to describe the eligibility criteria for Child Care Assistance.

R6-5-4912	The objective of this rule is to describe the activities and needs that qualify an applicant or recipient for Child Care Assistance.
R6-5-4913	The objective of this rule is to describe circumstances in which child care providers may care for their own children while also receiving Child Care Assistance.
R6-5-4914	The objective of this rule is to explain income eligibility requirements for applicants and how the Department calculates income to determine eligibility.
R6-5-4915	The objective of this rule is to explain how the Department assigns a fee level and copayment to a family.
R6-5-4916	The objective of this rule is to explain eligibility requirements for Child Care Assistance specifically related to Temporary Assistance for Needy Families (TANF).
R6-5-4917	The objective of this rule is to explain how the Department implements a waiting list for Child Care Assistance and the criteria used to prioritize eligibility categories and select applicants on the waiting list.
R6-5-4918	The objective of this rule is to explain how the Department authorizes Child Care Assistance for a client.
R6-5-4919	The objective of this rule is to explain the time limit for which a child is eligible to receive Child Care Assistance.
R6-5-4920	The objective of this rule is to explain in what situations the Department will deny or terminate Child Care Assistance.
R6-5-4921	The objective of this rule is to explain the Department's requirements to notify a client regarding a decision on an application, a positive or negative action, or a change in the amount of authorized units based on a change in need.
R6-5-4923	The objective of this rule is to explain how the Department pursues collection of overpayments.
R6-5-4924	The objective of this rule is to explain an applicant's right to appeal an adverse action and the procedures associated with an appeal hearing.
R6-5-4925	The objective of this rule is to explain that the Department pays the

	maximum reimbursement rates for child care as set forth in Appendix B.
Appendix A	The objective of this rule is to provide an appendix that lists the gross monthly income eligibility chart and fee schedule the Department uses to determine an applicant's required copayment.
Appendix B	The objective of this rule is to provide an appendix that lists the Department's maximum reimbursement rate for child care centers.

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
R6-5-4914	The rule is not effective because the rule does not address whether child support income paid to a former dependent/child over 18 years old is deducted from the income.
R6-5-4920	The rule is not effective because it does not address all situations when the Department terminates Child Care Assistance for a client.

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
R6-5-4901	This rule is inconsistent with other rules and statutes because: <ul style="list-style-type: none"> • This rule refers to "CPS." A.R.S. § 8-451 created DCS which led to the dissolution of CPS. • Some definitions within this rule are no longer consistent with state or federal law. Terms used in the Child Care and Development Block Grant Act of 2014 are not yet listed or defined in this rule. Additionally, terms not used within the rules should be eliminated.
R6-5-4904	This rule is inconsistent with other statutes and rules because this rule refers to "CPS." A.R.S. § 8-451 created DCS which led to the dissolution of CPS.
R6-5-4911	This rule is inconsistent with other statutes and rules because this rule refers to "CPS." A.R.S. § 8-451 created DCS which led to the dissolution

	of CPS.
R6-5-4912	This rule is inconsistent with other statutes and rules because this rule refers to “CPS.” A.R.S. § 8-451 created DCS which led to the dissolution of CPS.
R6-5-4914	This rule is inconsistent with other statutes and rules because this rule refers to “CPS.” A.R.S. § 8-451 created DCS which led to the dissolution of CPS.
R6-5-4915	This rule is inconsistent with other statutes and rules because this rule refers to “CPS.” A.R.S. § 8-451 created DCS which led to the dissolution of CPS.
R6-5-4917	This rule is inconsistent with other statutes and rules because this rule refers to “CPS.” A.R.S. § 8-451 created DCS which led to the dissolution of CPS.
R6-5-4918	This rule is inconsistent with 45 CFR 98.21(f) because the rule fails to ensure the Department takes into consideration a child’s development and learning when authorizing Child Care Assistance. Additionally, this rule is inconsistent with other statutes and rules because this rule refers to “CPS.” A.R.S. § 8-451 created DCS which led to the dissolution of CPS.
R6-5-4920	This rule is inconsistent with the Child Care and Development Block Grant Act of 2014 and changes to A.R.S. § 46-802(B) regarding termination of Child Care Assistance when the client's income exceeds 85% State Median Income during the eligibility determination.

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.

Rule	Explanation
R6-5-4904	This rule is not enforced as written because the Department no longer waives the application requirement for Cash Assistance participants who were referred for Child Care Assistance. This ensures that application procedures for all families seeking Child Care Assistance are uniform. The Department proposes to amend this rule by removing language stating that Cash Assistance participants are not required to complete an application.

R6-5-4905	This rule is not enforced as written because the Department currently allows ten business days for an applicant to report changes that may affect eligibility, whereas the rule as currently written requires a person to notify the Department within two business days. This practice aligns Child Care Assistance practices with other Department programs including Nutrition Assistance and Cash Assistance. The Department proposes to amend this rule by updating the reporting time frame from two business days to ten business days from the date the change becomes known.
R6-5-4911	This rule is not enforced as written because the Department currently gives clients ten business days to report changes to information impacting eligibility to align with other Department programs for which the client may be eligible, compared to the two days given to clients in the rule. The Department proposes to amend this rule from two business days to ten business days for a client to report a change.
R6-5-4914	This rule is not enforced as written because the Department currently takes into consideration a client's fluctuation in earnings when determining income eligibility in accordance with 45 CFR 98.21(c). The Department proposes to amend this rule to include a method to determine eligibility for applicants who have fluctuating income.
R6-5-4915	This rule is not enforced as written because the rule refers to Appendix A for establishing fee levels and copayments, which is outdated. The Department currently updates the fee schedule annually on the DES website at https://des.az.gov/file/25606/download . The Department proposes to amend this rule by removing the reference to Appendix A and providing the formula the Department uses to convert federal poverty level and state median income data for each fee level.
R6-5-4916	This rule is not enforced as written because staff do not review the reason for a client's Cash Assistance closure when determining eligibility for Transitional Child Care. The Department proposes to amend this rule by stating that closure of a client's Cash Assistance case due to a sanction does not preclude receipt of Transitional Child Care.
R6-5-4919	This rule is not enforced as written because the Department does not require a parent or caretaker to sign a self-sufficiency statement to qualify for an extension of the Child Care Assistance time limit and when the Department does grant an extension of the time limit for Child Care Assistance the extension is for 12 months instead of six months. The Department proposes to amend this rule by removing the requirement to sign a self-sufficiency statement to receive an extension of the time limit and increase the extension from six months to 12 months.
R6-5-4920	The rule is not enforced as written because the rule requires a client to be a U.S. citizen or legal resident of the U.S, however under federal law only

	the child for whom services are requested is required to be a U.S. citizen or legal resident. If the Department considers citizenship of anyone other than the child, the Department may face federal sanctions up to and including the loss of federal funding. The Department proposes to amend this rule by stating that the child for whom Child Care Assistance is requested must be a U.S. citizen or legal resident of the U.S.
R6-5-4923	The rule is not enforced as written because overpayments that involve suspected fraud are referred to a different unit of the Department's Office of Inspector General (OIG), not the Office of Special Investigations as stated in the rule. The Department proposes to amend this rule by stating that suspected fraud cases will be referred to OIG for investigation.
R6-5-4924	The rule is not enforced as written because the rule fails to state that applicants and recipients are not entitled to a hearing due to denial or termination of assistance when the denial or termination is based on a reduction of funding appropriated to the Department for the Child Care Assistance program. The Department proposes to amend the rule by adding language that a client is not entitled to a hearing to challenge denial or termination of assistance due to the Department's lack of funds.
R6-5-4925	The rule is not enforced as written because it refers to Appendix B in relation to the maximum reimbursement rates paid by the Department for child care, but the Department no longer maintains Appendix B. The Department proposes to amend this rule by explaining the method the Department uses to set maximum reimbursement rates and the data upon which the determination is made.
Appendix A	This rule is not enforced as written because the Child Care Assistance Gross Monthly Income Eligibility Chart and Fee Schedule is posted on the DES website and is updated annually per A.R.S. § 46-805(F) rather than being updated in the Appendix. The Department proposes to repeal this appendix.
Appendix B	This rule is not enforced as written because the Maximum Reimbursement Rates for Child Care Assistance is posted on the DES website at https://des.az.gov/file/25221/download as consumer information and updated as changes occur in lieu of updating this Appendix. The Department proposes to repeal this appendix.

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
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R6-5-4906	This rule is not clear because it fails to specify how a client is required to provide verification of eligible activities and needs as requested by the Department. The Department proposes to amend this rule by adding language that states the type of acceptable verification of eligible activities and needs a client may submit to the Department.
R6-5-4908	This rule is not clear because the Department allows a client ten days from the notice date to submit requested information when there is a delay in the DES request for additional information. The rule does not explain this ten day allowance. The Department proposes to amend this rule by adding the information about this ten day period from the notice date.
R6-5-4910	This rule is not clear or understandable because the language is archaic and difficult to interpret. The Department proposes to amend this rule to improve readability and clearly state the reasons the Department will reinstate assistance.
R6-5-4911	This rule is not clear or concise because the structure and language are overly complex. The Department proposes to amend this rule to improve readability and revise language to be more concise and to clarify applicant and client responsibilities related to eligibility for Child Care Assistance.
R6-5-4912	The rule is not concise because the rule includes specificity that is not required to be addressed in rule and is already included in the Division of Child Care's policy manual. The Department proposes to amend this rule by reducing the specificity of an eligible activity or need and adding clarifying language to improve readability.

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:

The Department last amended Article 49 in 1997 via Exempt Rulemaking, which means the Department was not required to prepare an Economic Impact Statement.

These rules provide the process for the public to request Child Care Assistance, including application, eligibility, and termination of assistance. The Department provides Child Care Assistance to eligible families who participate in employment activities and specific education and training activities related to employment by providing financial support intended to offset a portion of child care costs. This financial support allows families better access to high-quality, early care, and education settings for their children. Child care assistance is also available for children who are involved with the Department of Child Safety (DCS) due to child abuse or neglect, and families with children experiencing homelessness.

In SFY 2021, the Department reimbursed child care providers a total of \$212.9 million in Child Care Assistance, equating to 59,784 children and 34,707 families. During SFY 2021, Arizona received approximately \$1.3 billion in supplemental Child Care and Development Fund funds for child care providers to prevent, prepare for, and respond to the COVID-19 Pandemic, and expanded flexibility to provide Child Care Assistance to families and children through the following federal relief laws:

- Coronavirus Aid, Relief, and Economic Security (CARES) Act in March 2020;
- Coronavirus Response and Relief Supplemental Appropriations Act in December 2020; and
- American Rescue Plan Act in March 2021.

With these funds in SFY 2021, the Department developed Arizona's Child Care Recovery Plan focused on four key priorities:

1. Expanding access to care;
2. Investing in quality;

3. Stabilizing the child care network; and

4. Accelerating educational support and early childhood literacy.

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

Yes No

The Department did not receive a business competitiveness 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.

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) in October 2017. The Department received an exception to the rulemaking moratorium from the Governor's Office on March 7, 2016. However, turnover of both administrative and programmatic staff led to a pause in the planned rulemaking. In addition, during the 2018 legislative session, the legislature made several changes that required significant revision to the draft rules that were in progress. In early 2020, as the Department was reaching the final stages of drafting the proposed rules, the COVID-19 Pandemic required the Department to quickly divert all resources to providing pandemic response services. Child care was needed and provided to not only those families that were traditionally eligible, but also the families of workers who were on the front lines battling the COVID-19 Pandemic. Ultimately, this increase contributed significantly to the Department's January 2022 announcement on the creation of a stand-alone division within the Department to administer all child care related programs, the Division of Child Care.

As the Pandemic has receded and staff availability has stabilized, the Department has

renewed its commitment to rulemaking and has made significant progress on these rules. The Department engaged in informal stakeholder input for the draft rules in April 2022. All comments have been addressed and the draft Notice of Proposed Rulemaking (NPR) is in the Department's internal approval process before the NPR is filed with the Secretary of State.

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:

The businesses that are directly affected by the rulemaking are child care providers who choose to contract with the Department. Entering into a contract with the Department is optional and not mandatory. The federal requirements of extending Child Care Assistance for a minimum of 12 months after an eligibility determination and having 85% state median income as an eligibility exit threshold promote continuity of care for children receiving Child Care Assistance. This continuity will benefit child care providers through the receipt of more consistent revenue and less client turnover.

The Department anticipates that this rulemaking will have a positive impact on public and private employment because of the continuity of care for children receiving Child Care Assistance this rulemaking promotes. Child care has been identified as one of the major causes for work disruptions. Having child care services for a longer period of time will provide parents stability and the ability to be more productive and reliable members of the workforce, which in turn will benefit employers' efforts to retain a qualified workforce.

Based on this analysis, there are no negative impacts to small businesses or clients regulated by these rules. The benefits of the rule outweigh the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons necessary to achieve the underlying regulatory objective.

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)?

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.

The Department received a moratorium exception request from the Governor's Office in March 2016 for approval to engage in rulemaking and revise the rules in Article 49 to address issues identified in this report, ensure compliance with federal law, and reduce potential violations of federal law that could result in sanction by the federal government. The regular rulemaking will also address the shift in statutory and regulatory authority from CPS to DCS, as well as to reflect the changes made to the leadership and structure of the Department as they relate to administration of Child Care Assistance. The Department anticipates filing a Notice of Final Rulemaking with the Council by April 2023.