

**Department of Economic Security
Title 6, Chapter 18
Five-Year Review Report**

1. Authorization of the rule by existing statutes

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

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

2. The objective of each rule:

Rule	Objective
R6-18-101	The objective of this rule is to define terms used in Article 7.
R6-18-701	The objective of this rule is to identify the entities regulated by this Article.
R6-18-702	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	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	The objective of this rule is to require the locked storage of all medications, and to protect children and vulnerable adults from unauthorized access to potentially dangerous substances. It specifies the ways in which various medications shall be stored.
R6-18-705	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	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.

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Rule	Objective
R6-18-707	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	The objectives of this rule are to ensure the availability of specific fire safety equipment, establish procedural safeguards, and 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	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.

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
R6-18-701	R6-18-701(1) states that the rules are applicable to Foster homes regulated under Title 6, Chapter 5, Article 58. R6-18-701(4) states that the rules are applicable to Child welfare agencies. Both citations are obsolete as the rules are no longer applicable to foster homes or child welfare agencies.
R6-18-703	R6-18-703(4)(b) requires ammunition to be locked separate from firearms. Providers inquire about whether this means in a separate container or if it is acceptable to be in the same location as the firearms except under a different lock and key. R6-18-703(6) prohibits the Office of Licensing, Certification, and Regulation (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.

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Rule	Explanation
	For example, care providers have inquired about whether certain breeds of dogs, reptiles, and exotic pets are permissible in a licensed setting.
R6-18-704	<p>The rule pertains to the storage of medication. Although medication is defined in R6-18-101(7), providers often ask about vitamins, minerals, and dietary supplements.</p> <p>R6-18-704(B) is no longer applicable since child welfare group homes and shelters are licensed under the Department of Child Safety (DCS).</p>
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.
R6-18-707	<p>R6-18-707(B) requires the OLCR to collect a sample of water for testing by a state-certified laboratory for all homes with a non-municipal source of water. This does not represent current practice. The OLCR requires the provider to submit a sample to a state certified laboratory and assume the cost of the testing. Once the test is complete, the provider forwards a copy of the results to the OLCR.</p> <p>R6-18-707(B) does not specify how often the water is to be tested.</p> <p>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.</p> <p>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.</p>

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Rule	Explanation
R6-18-709	<p>R6-18-709(A) requires rescue equipment for pools deeper than four 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.</p> <p>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. Providers also ask about locking requirements for when there is an RV gate that opens into the pool area.</p>

4. **Are the rules consistent with other rules and statutes?** Yes X 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
NA	NA

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

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
R6-18-707(B)	The procedures outlined in R6-18-707(B) are not reflective of current practice. The OLCR requires the provider to submit a sample of the non-municipally sourced water to a state certified laboratory.

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

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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
R6-18-701 R6-18-703 R6-18-704 R6-18-705 R6-18-707 R6-18-709	The rules in Chapter 18 are clear, concise, and understandable, except as explained in items 3 and 5 above.

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

Yes ___ No X

If yes, please fill out the table below:

Commenter	Comment	Agency's Response
NA	NA	NA

8. Economic, small business, and consumer 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, September 16, 2005. Major changes have occurred since the 2015 rules review due to the creation of the DCS, which is now assigned responsibility in licensing foster homes and other child welfare programs that no longer fall under the Title 6 purview.

The 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 The Department of Economic Security (Department) 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.

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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 the DDD 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 wellbeing of clients. Additionally, impacted are contracted agencies, individual care providers, and other Divisions within the Department.

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

Fiscal Year (FY) 2015 expenditures reflect inspections done since the OLCR became an entity within the DDD and separate from the DCS child welfare licensing program, while FY 2020 expenditures reflect inspections performed while the units were combined. This explains the significant change from FY 2015 to FY 2020.

Estimated Expenditures for the Regulatory Support Unit

	FY 2015	FY 2020
Expenditures:		
Personnel Related	268,403	272,670
Workspace, Equipment, Services	5,370	23,980
Travel/Vehicles	1,948	1,347
Total	275,721	297,997
Inspection Data:		
SOGHs and ICFs*	NA	NA

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	FY 2015	FY 2020
Initial Inspections	1,722	179
Re-inspections	NA	11
Renewal	1,040	139
Relocation	608	97
Special (new construction/pool install, etc.)	126	2
Total	3,496	428

*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.

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

Yes No

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

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

In the previous Five-year Review Report, approved by the Council on February 2, 2016, the Department had indicated that after the Department consolidates the life-safety inspection rules into Title 6, Chapter 6, and the DCS promulgates its life-safety inspection rules, the Department plans to repeal the rules in Title 6, Chapter 18. On May 16, 2016, the Department received an exemption to consolidate the life-safety inspection rules into Title 6, Chapter 6 and repeal the rules in Title 6, Chapter 18. The Department has completed a preliminary draft of the life-safety inspection rules to incorporate into Title 6, Chapter 6. The draft is in the final stages of the review process before filing with the Secretary of State. However, in March 2020 the review for finalizing the draft was put on hold to allow staff the time to work on responding to the COVID-19 issues and associated activities.

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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 Department believes that 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.

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

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)?

The Department has determined that there is no corresponding federal law applicable to the rules contained in this Chapter.

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 agency 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 plans to resolve the ineffectiveness of the rules identified in Item 3 (Effective in achieving their objective) as the Life-Safety Inspection rules are being consolidated into Title 6, Chapter 6. After the Department consolidates the Life-Safety Inspection rules into Title 6, Chapter 6, the Department plans to repeal the rules in Title 6, Chapter 18. In the Title 6, Chapter

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6 Five-Year Review Report approved by the Council on January 5, 2021, the Department proposed to submit the Notice of Final Rulemaking to the Governor's Regulatory Review Council to consolidate the Life-Safety Inspection rules into Title 6, Chapter 6 by December 2021. The Department plans to repeal the rules in Title 6, Chapter 18 by July 2022.