

NOTICE OF PROPOSED EXPEDITED RULEMAKING
TITLE 9. HEALTH SERVICES
CHAPTER 5. DEPARTMENT OF HEALTH SERVICES – CHILD CARE FACILITIES

PREAMBLE

<u>1.</u>	<u>Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
	R9-5-101.	Amend
	R9-5-201.	Amend
	R9-5-203.	Amend
	R9-5-208.	Amend
	R9-5-402.	Amend

2. **Citations to the agency’s statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**

Authorizing statutes: A.R.S. §§ 36-132(A)(1) and A.R.S. § 36-136(G)
Implementing statutes: A.R.S. §§ 36-883.02 and 46-811

3. **Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed expedited rule:**

Notice of Rulemaking Docket Opening: 26 A.A.R. 2810, October 30, 2020

4. **The agency’s contact person who can answer questions about the rulemaking:**

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5. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, under A.R.S § 41- 1027, to include an explanation about the rulemaking:

The Department licenses child care facilities under Arizona Revised Statutes (A.R.S.) Title 36, Chapter 7.1, Article 1, and has adopted rules for child care facilities in Arizona Administrative Code Title 9, Chapter 5. The Department in this expedited rulemaking clarifies requirements for personnel, volunteers, and others providing services for enrolled children who attend licensed child care facilities to ensure the health and safety of the enrolled children. To ensure that the Article 5 rules are not outdated, the amended rules will comply with Laws 2020, Ch. 86 and the Child Care and Development Block Grant Act of 2014 (P.L. 113-186) by specifying all child care personnel and volunteers shall have both a valid fingerprint clearance card issued and a background check conducted pursuant to P.L. 113-186 before starting employment or volunteer work. The current Article 5 rules contains requirements for fingerprint checks and state criminal registry verification. To ensure consistency and compliance with P.L. 113-186, the Department plans to add requirements for background check verification that includes: the state sex offender registry, the state child abuse and neglect registries and databases, the National Crime Information Center, and the National Sex Offender Registry. Amending Article 5 will make the rules consistent with A.R.S. § 46-811, eliminate confusion related to child care fingerprinting and background check requirements, and ensure the health and safety for enrolled children attending a child care facility. The proposed amendments will conform to rulemaking format and style requirements of the Governor's Regulatory Review Council and the Office of the Secretary of State.

6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The Department did not review or rely on any study for this rulemaking.

7. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state.

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

Under A.R.S. § 41-1055(D)(2), the Department is not required to provide an economic, small business, and consumer impact statement.

9. The agency's contact person who can answer questions about the economic, small business, and consumer impact statement:

Not applicable

10. Where, when, and how persons may provide written comments on the proposed rule:

Close of record: January 20, 2022 at 4:00 p.m.

A person may submit written comments on the proposed expedited rules no later than the close of record to either of the individuals listed in item 4.

11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

There are no other matters prescribed by statutes applicable specifically to the Department or this specific rulemaking.

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

The Department pursuant to A.R.S. § 36-882 is required to provide licensure for child care facilities and pursuant to A.R.S. § 36-888, the Department retains the authority to deny, revoke, or suspend an applicant or a child care facility licensee's ability to operate.

The Department does not use a general permit. The Department believes that under A.R.S. § 41-1037(A)(3) that a general permit is not applicable.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

A.R.S. § 46-811 provides the Department authority to require background checks for staff members and volunteers specified in the Child Care and Development Block Grant Act of 2014 (P. L. 113 – 186). The Department in this rulemaking adds background checks consistent with P. L. 113 – 186. The Department is not aware of any other federal laws applicable to the subject of this Article 1 and Article 2 rulemaking.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No such analysis was submitted.

12. **A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:**

None

13. **The full text of the rules follows:**

TITLE 9. HEALTH SERVICES

CHAPTER 5. DEPARTMENT OF HEALTH SERVICES – CHILD CARE FACILITIES

Sections

- R9-5-101. Definitions
- R9-5-201. Facility Licensure
- R9-5-203. ~~Fingerprinting and Central Registry Requirements~~ Fingerprinting and Background Check
- R9-5-208. Changes Affecting a License
- R9-5-402. Staff Records and Reports

ARTICLE 1. GENERAL

R9-5-101. Definitions

In addition to the definitions in A.R.S. § 36-881, the following definitions apply in this Chapter unless otherwise specified:

1. “Abuse” has the same meaning as in A.R.S. § 8-201.
2. “Accident” means an unexpected occurrence that:
 - a. Causes injury to an enrolled child,
 - b. Requires attention from a staff member, and
 - c. May or may not be an emergency.
3. “Accommodation school” has the same meaning as in A.R.S. § 15-101.
4. “Accredited” means approved by the:
 - a. New England Commission of Institution of Higher Education,
 - b. Middle States Commission of Higher Education,
 - c. North Central the Higher Learning Commission,
 - d. Northwest Commission on Colleges and Universities,
 - e. Commission on Colleges, or
 - f. Western Association of Schools and Colleges.
5. “Activity” means an action planned by a licensee and performed by an enrolled child while supervised by a staff member.
6. “Activity area” means a specific indoor or outdoor space or room of a licensed facility that is designated by a licensee for use by an enrolled child for an activity.
7. “Adaptive device” means equipment used to augment an individual’s use of the individual’s arms, legs, sight, hearing, or other physical part or function.
8. “Administrative completeness review time-frame” has the same meaning as in A.R.S. § 41-1072.
9. “Adult” means an individual who is at least 18 years of age.
10. “Age-appropriate” means consistent with a child’s age and age-related stage of physical growth and mental development.
11. “Agency” means any board, commission, department, office, or other administrative unit of the federal government, the state, or a political subdivision of the state.
12. “Applicant” means a person or governmental agency requesting one of the following:
 - a. A license, or
 - b. Approval of a change affecting a license under R9-5-208.

13. “Application” means the documents that an applicant is required to submit to the Department for licensure or approval of a request for a change affecting a license.
14. “Assistant teacher-caregiver” means a staff member who aids a teacher-caregiver in planning, developing, or conducting child care activities.
15. “Association” means a group of individuals other than a corporation, limited liability company, partnership, joint venture, or public school who has established a governing board and bylaws to operate a facility.
16. “Background check” means results identified in searches of the following according to A.R.S. § 46-811(A) and consistent with the Child Care and Development Block Grant Act of 2014 (P.L. 113-186):
 1. The state sex offender registry within this state and each state where a staff member resided during the preceding five years;
 2. The state-based child abuse and neglect registries and databases within this state and each state where a staff member resided during the preceding five years;
 3. The National Crime Information Center; and
 4. The National Sex Offender Registry established under the Adam Walsh Child Protection and Safety Act of 2006 (42 A.S.C. 16901 et seq).
- ~~16~~17. “Beverage” means a liquid for drinking, including water.
- ~~17~~18. “Business organization” has the same meaning as “entity” in A.R.S. § 10-140.
- ~~18~~19. “Calendar day” means each day, not including the day of the act, event, or default from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.
- ~~19~~20. “Calendar week” means a seven-day period beginning on Sunday at 12:00 a.m. and ending on Saturday at 11:59 p.m.
- ~~20~~21. “C.C.P.” means Certified Childcare Professional, a credential awarded by the National Early Childhood Program Accreditation.
- ~~21~~22. “C.D.A.” means Child Development Associate, a credential awarded by the Council for Professional Recognition.
- ~~22~~23. “Change in ownership” means a transfer of controlling legal or controlling equitable interest and authority in a facility resulting from a sale or merger of a facility.
- ~~23~~24. “Charter school” has the same meaning as in A.R.S. § 15-101.
- ~~24~~25. “Child care experience” means an individual’s documented work with children in:

- a. A child care facility or a child care group home that was licensed, certified, or approved by a state in the United States or by one of the Uniformed Services of the United States;
- b. A public school, a charter school, a private school, or an accommodation school;
- c. A public or private educational institution authorized under the laws of another state where instruction was provided for any grade or combination of grades between pre-kindergarten and grade 12; or
- d. One of the following professional fields:
 - i. Nursing,
 - ii. Social work,
 - iii. Psychology,
 - iv. Child development, or
 - v. A closely-related field.

~~25:26.~~ “Child care services” means the range of activities and programs provided by a licensee to an enrolled child, including personal care, supervision, education, guidance, and transportation.

~~26:27.~~ “Child with special needs” means:

- a. A child with a health care provider’s diagnosis and record of a physical or mental condition that substantially limits the child in providing self-care or performing manual tasks or any other major life function such as walking, seeing, hearing, speaking, breathing, or learning;
- b. A child with a “developmental disability” as defined in A.R.S. § 36-551; or
- c. A “child with a disability” as defined in A.R.S. § 15-761.

~~27:28.~~ “Clean” means to remove dirt or debris by methods such as washing with soap and water, vacuuming, wiping, dusting, or sweeping.

~~28:29.~~ “Closely-related field” means any educational instruction or occupational experience pertaining to the growth, development, physical or mental care, or education of children.

~~29:30.~~ “Communicable disease” has the same meaning as in A.A.C. R9-6-101.

~~30:31.~~ “Compensation” means money or other consideration, including goods, services, vouchers, time, government or public expenditures, government or public funding, or another benefit, that is received as payment.

~~31:32.~~ “Corporal punishment” means any physical action used to discipline a child that inflicts pain to the body of the child, or that may result in physical injury to the child.

~~32:33.~~ “CPR” means cardiopulmonary resuscitation.

- 33-34. “Credit hour” means an academic unit earned at an accredited college or university:
- a. By attending a one-hour class session each calendar week during a semester or equivalent shorter course term, or
 - b. Completing practical work for a course as determined by the accredited college or university.
35. “DES” means the Arizona Department of Economic Security.
- 34-36. “Designated agent” means an individual who meets the requirements in A.R.S. § 36-889(D).
- 35-37. “Developmentally-appropriate” means consistent with a child’s physical, emotional, social, cultural, and cognitive development, based on the child’s age and family background and the child’s personality, learning style, and pattern and timing of growth.
- 36-38. “Discipline” means the on-going process of helping a child develop self-control and assume responsibility for the child’s own actions.
- 37-39. “Documentation” means information in written, photographic, electronic, or other permanent form.
40. “DPS” means the Arizona Department of Public Safety.
- 38-41. “Electronic signature” has the same meaning as in A.R.S. § 41-351(9).
- 39-42. “Emergency” means a potentially life-threatening occurrence involving an enrolled child or staff member that requires an immediate response or medical treatment.
- 40-43. “Endanger” means to expose an individual to a situation where physical injury or mental injury to the individual may occur.
- 41-44. “Enrolled” means placed by a parent and accepted by a licensee for child care services.
- 42-45. “Evening and nighttime care” means child care services provided between the hours of 8:00 p.m. and 5:00 a.m.
- 43-46. “Facility” has the same meaning as “child care facility” in A.R.S. § 36-881.
- 44-47. “Facility director” means an individual who is designated by a licensee as the individual responsible for the daily onsite operation of a facility.
- 45-48. “Facility premises” means property that is:
- a. Designated on an application for a license by the applicant; and
 - b. Licensed for child care services by the Department under A.R.S. Title 36, Chapter 7.1, Article 1, and this Chapter.
- 46-49. “Fall zone” means the surface under and around a piece of equipment onto which a child falling from or exiting from the equipment would be expected to land.
- 47-50. “Field trip” means an activity planned by a staff member for an enrolled child:

- a. At a location or area that is not licensed for child care services by the Department, or
 - b. At a child care facility in which the child is not enrolled.
- ~~48.51.~~ “Final construction drawings” means facility plans that include the architectural, structural, mechanical, electrical, fire protection, plumbing, and technical specifications of the physical plant and the facility premises and that have been approved by local government for the construction, alteration, or addition of a facility.
- ~~52.~~ “Fingerprint clearance” means results identified in a search of the Federal Bureau of Investigation fingerprint check using the Integrated Automated Fingerprint Identification System according to A.R.S. § 41-1758.02 and consistent with the Child Care and Development Block Grant Act of 2014 (P.L. 113-186).
- ~~49.53.~~ “Food” means a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.
- ~~50.54.~~ “Food preparation” means processing food for human consumption by cooking or assembling the food, but does not include distributing prepackaged food or whole fruits or vegetables.
- ~~51.55.~~ “Full-day care” means child care services provided for six or more hours per day between the hours of 5:00 a.m. and 8:00 p.m.
- ~~52.56.~~ “Governmental agency” has the same meaning as in A.R.S. § 44-7002.
- ~~53.57.~~ “Guidance” means the ongoing direction, counseling, teaching, or modeling of generally accepted social behavior through which a child learns to develop and maintain the self-control, self-reliance, and self-esteem necessary to assume responsibilities, make daily living decisions, and live according to generally accepted social behavior.
- ~~54.58.~~ “Hazard” means a source of endangerment.
- ~~55.59.~~ “Health care provider” means a physician, physician assistant, or registered nurse practitioner.
- ~~56.60.~~ “High school equivalency diploma” means:
- a. A document issued by the State Board of Education under A.R.S. § 15-702 to an individual who passes a general educational development test or meets the requirements of A.R.S. § 15-702(B);
 - b. A document issued by another state to an individual who passes a general educational development test or meets the requirements of a state statute equivalent to A.R.S. § 15-702(B); or

- c. A document issued by another country to an individual who has completed that country's equivalent of a 12th grade education, as determined by the Department based upon information obtained from American or foreign consulates or embassies or other governmental agencies.
- ~~57-61.~~ "Hours of operation" means the specific time during a day for which a licensee is licensed to provide child care services.
- ~~58-62.~~ "Illness" means physical manifestation or signs of sickness, such as pain, vomiting, rash, fever, discharge, or diarrhea.
- ~~59-63.~~ "Immediate" or "immediately" means without restriction, delay, or hesitation.
- ~~60-64.~~ "Inaccessible" means:
- a. Out of an enrolled child's reach, or
 - b. Locked.
- ~~61-65.~~ "Infant" means:
- a. A child 12 months of age or younger, or
 - b. A child 18 months of age or younger who is not yet walking.
- ~~62-66.~~ "Infant care" means child care services provided to an infant.
- ~~63-67.~~ "Infestation" means the presence of lice, pinworms, scabies, or other parasites.
- ~~64-68.~~ "Inspection" means:
- a. Examination of a facility by the Department to determine compliance with A.R.S. Title 36, Chapter 7.1, Article 1, and this Chapter;
 - b. Review of facility documents, records, or reports by the Department; or
 - c. Examination of a facility by a local governmental agency.
- ~~65-69.~~ "Lesson plan" means a written description of the activities scheduled in each activity area for a day.
- ~~66-70.~~ "License" means the written authorization issued by the Department to operate a facility in Arizona.
- ~~67-71.~~ "Licensed applicator" who complies with A.A.C. R3-8-201(C).
- ~~68-72.~~ "Licensed capacity" means the maximum number of enrolled children for whom a licensee is authorized by the Department to provide child care services in a facility or a part of a facility at any given time.
- ~~69-73.~~ "Licensee" means a person or governmental agency to whom the Department has issued a license to operate a facility in Arizona.
- ~~70-74.~~ "Local" means under the jurisdiction of a city or county in Arizona.

- ~~71~~75. “Mat” means a foam pad that has a waterproof cover and is of sufficient size and thickness to accommodate the height, width, and weight of a reclining child’s body.
- ~~72~~76. “Medication” means a substance prescribed by a physician, physician assistant, or registered nurse practitioner or available without a prescription for the treatment or prevention of illness or infestation.
- ~~73~~77. “Menu” means:
- a. A written description of the food that a facility provides and serves as a meal or snack, or
 - b. The combination of food that a facility provides and serves as a meal or snack.
- ~~74~~78. “Motor vehicle” has the same meaning as in A.R.S. § 28-101.
- ~~75~~79. “N.A.C.” means the National Administrator Credential, a credential issued by the National Institute of Child Care Management.
- ~~76~~80. “Name” means, for an individual, the individual’s first name and the individual’s last name.
- ~~77~~81. “Naptime” means any time during hours of operation, other than evening and nighttime hours, that is designated by a licensee for the rest or sleep of enrolled children.
- ~~78~~82. “Neglect” has the same meaning as in A.R.S. § 8-201.
- ~~79~~83. “One-year-old” means a child who is not an infant and at least 12 months of age but not yet two years of age.
- ~~80~~84. “Outbreak” has the same meaning as in A.A.C. R9-6-101.
- ~~81~~85. “Overall time-frame” has the same meaning as in A.R.S. § 41-1072.
- ~~82~~86. “Parent” means:
- a. A natural or adoptive mother or father,
 - b. A legal guardian appointed by a court of competent jurisdiction, or
 - c. A “custodian” as defined in A.R.S. § 8-201.
- ~~83~~87. “Part-day care” means child care services provided for fewer than six hours per day between the hours of 5:00 a.m. and 8:00 p.m.
- ~~84~~88. “Perishable food” means food that becomes unfit for human consumption if not stored to prevent spoilage.
- ~~85~~89. “Pesticide” has the same meaning as in A.R.S. § 32-3601.
- ~~86~~90. “Pesticide label” means the written, printed, or graphic matter approved by the United States Environmental Protection Agency on, or attached to, a pesticide container.
- ~~87~~91. “Physical injury” means temporary or permanent damage or impairment to a child’s body.

- ~~88~~92. “Physical plant” means a building that houses a facility, or the licensed areas within a building that houses a facility, including the architectural, structural, mechanical, electrical, plumbing, and fire protection elements of the building.
- ~~89~~93. “Physician” means an individual licensed as a doctor of:
- a. Allopathic medicine under A.R.S. Title 32, Chapter 13;
 - b. Naturopathic medicine under A.R.S. Title 32, Chapter 14;
 - c. Osteopathic medicine under A.R.S. Title 32, Chapter 17;
 - d. Homeopathic medicine under A.R.S. Title 32, Chapter 29; or
 - e. Allopathic, naturopathic, osteopathic, or homeopathic medicine under the law of another state.
- ~~90~~94. “Physician assistant” means:
- a. An individual who is licensed under A.R.S. Title 32, Chapter 25; or
 - b. An individual who is licensed as a physician assistant under the law of another state.
- ~~91~~95. “Private pool” has the same meaning as “private residential swimming pool” in A.A.C. R18-5-201.
- ~~92~~96. “Private school” has the same meaning as in A.R.S. § 15-101.
- ~~93~~97. “Program” means a variety of activities organized and conducted by a staff member.
- ~~94~~98. “Public pool” has the same meaning as “public swimming pool” in A.A.C. R18-5-201.
- ~~95~~99. “Public school” has the same meaning as “school” in A.R.S. § 15-101.
- ~~96~~100. “Registered nurse practitioner” means:
- a. An individual who is licensed and certified as a “registered nurse practitioner” under A.R.S. § 32-1601, or
 - b. An individual who is licensed or certified as a registered nurse practitioner under the law of another state.
- ~~97~~101. “Regular basis” means at recurring, fixed, or uniform intervals.
- ~~98~~102. “Responsible party” means an individual or a group of individuals who:
- a. Is assigned by a public school, charter school, or governmental agency; and
 - b. Has general oversight of the child care facility.
- ~~99~~103. “Sanitize” means to use heat, chemical agents, or germicidal solutions to disinfect and reduce pathogen counts, including bacteria, viruses, mold, and fungi.
- ~~100~~104. “School-age child” means a child who:
- a. Meets one of the following:
 - i. Is five years old on or before January 1 of the current school year, or

- ii. Is five years old on or before January 1 of the most recent school year; and
- b. Meets one of the following:
 - i. Attends kindergarten or a higher level program in a public, charter, accommodation, or private school during the current school year;
 - ii. Attended kindergarten or a higher level program in a public, charter, accommodation, or private school during the most recent school year;
 - iii. Is home-schooled at a kindergarten or higher level during the current school year; or
 - iv. Was home-schooled at a kindergarten or higher level during the most recent school year.

~~404~~.105. “School-age child care” means child care services provided to a school-age child.

~~402~~.106. “School campus” means the contiguous grounds of a public, charter, accommodation, or private school, including the buildings, structures, and outdoor areas available for use by children attending the school.

~~403~~.107. “School governing board” has the same meaning as “governing board” in A.R.S. § 15-101.

~~404~~.108. “Screen time” means the use of electronic media to watch television or to watch a video, a DVD, or a movie at the facility or at another location or the use of electronic media or a computer for game-playing, entertainment, communication, or educational purposes.

~~405~~.109. “Semi-public pool” has the same meaning as “semipublic swimming pool” in A.A.C. R18-5-201.

~~406~~.110. “Service classification” means one of the following:

- a. Full-day care;
- b. Part-day care;
- c. Evening and nighttime care;
- d. Infant care;
- e. One-year-old child care;
- f. Two-year-old child care;
- g. Three-year-old, four-year-old, and five-year-old child care;
- h. School-age child care; or
- i. Weekend care.

- ~~407~~.111. “Signatory” means an individual who is authorized by a school district governing board, school district superintendent, or governmental agency to sign a document on behalf of the school district governing board, school district superintendent, or governmental agency.
- ~~408~~.112. “Signed” means affixed with an individual’s signature or with a symbol representing an individual’s signature if the individual is unable to write the individual’s name.
- ~~409~~.113. “Sippy cup” means a lidded drinking container that is designed to be leak proof or leak-resistant and from which a child drinks through a spout or straw.
- ~~440~~.114. “Space utilization” means the designated use of an area within a facility for specific child care services or activities.
- ~~444~~.115. “Staff” or “staff member” means the same as “child care personnel” as defined in A.R.S. § 36-883.02.
- ~~442~~.116. “Student-aide” means an individual less than 16 years of age who is participating in an educational, curriculum-based course of study; vocational education; or occupational development program and who, without being compensated by a licensee, is present at a facility to receive instruction from and supervision by staff in the provision of child care services.
- ~~443~~.117. “Substantive review time-frame” has the same meaning as in A.R.S. § 41-1072.
- ~~444~~.118. “Supervision” means:
- a. For an enrolled child, knowledge of and accountability for the actions and whereabouts of the enrolled child, including the ability to see or hear the enrolled child at all times, to interact with the enrolled child, and to provide guidance to the enrolled child; or
 - b. For an individual other than an enrolled child, knowledge of and accountability for the actions and whereabouts of the individual, including the ability to see and hear the individual when the individual is in the presence of an enrolled child and the ability to intervene in the individual’s actions to prevent harm to enrolled children.
- ~~445~~.119. “Swimming pool” has the same meaning as in A.A.C. R18-5-201.
- ~~446~~.120. “Teacher-caregiver” means a staff member responsible for developing, planning, and conducting child care activities.
- ~~447~~.121. “Teacher-caregiver-aide” means a staff member who provides child care services under the supervision of a teacher-caregiver.

~~118.122.~~ “Training” means child care-related conferences, seminars, lectures, workshops, classes, courses, or instruction.

~~119.123.~~ “Tummy time” means a limited period-of-time no more than 20 minutes used to allow a non-crawling infant:

- i. To strengthen the infant’s head, neck, and upper body muscles; and
- ii. To increase the infant’s sensory perception, visual and hearing acuity, and social and emotional interaction.

~~120.124.~~ “Volunteer” means a staff member who, without compensation, provides child care services that are the responsibility of a licensee.

~~121.125.~~ “Working day” means a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a state holiday, federal holiday, or a statewide furlough day.

ARTICLE 2. FACILITY LICENSURE

R9-5-201. Application for a License

A. An applicant for a license shall:

1. Be at least 21 years of age;
2. If an individual, be a U.S. citizen or legal resident alien and a resident of Arizona;
3. If a corporation, association, or limited liability company, be a domestic entity or a foreign entity qualified to do business in Arizona;
4. If a partnership, have at least one partner who is a U.S. citizen or legal resident alien and a resident of Arizona;
5. Submit to the Department an application packet containing:
 - a. An application on a form provided by the Department that contains:
 - i. The applicant’s name;
 - ii. The applicant’s date of birth;
 - iii. The facility’s name, street address, city, state, zip code, mailing address, and telephone number;
 - iv. The requested service classifications;
 - v. Whether the applicant agrees to allow the Department to submit supplemental requests for information;
 - vi. A statement that the applicant has read and will comply with A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter;
 - vii. A statement that the information provided in the application packet is accurate and complete; and

- viii. The applicant's signature and date the applicant signed the application;
- b. A copy of the applicant's:
 - i. U.S. passport,
 - ii. Birth certificate,
 - iii. Naturalization documents, or
 - iv. Documentation of legal resident alien status;
- c. ~~A copy of the applicant's valid fingerprint clearance card, both front and back, issued according to A.R.S. Title 41, Chapter 12, Article 3.1;~~
A copy of the applicant's valid:
 - i. DPS fingerprint clearance card, both front and back, issued according to A.R.S. Title 41, Chapter 12, Article 3.1; and
 - ii. DES background check according to A.R.S. § 46-811(A);
- d. A copy of the form required in A.R.S. § 36-883.02(C);
- e. A certificate issued by the Department showing that the applicant has completed at least four hours of Department-provided training that included the Department's role in licensing and regulating child care facilities under A.R.S. Title 36, Chapter 7.1, Article 1, and this Chapter;
- f. Except as provided in subsection ~~(A)(5)(i)(A)(5)(j)~~, a site plan of the facility drawn to scale showing:
 - i. The drawing scale;
 - ii. The boundary dimensions of the property upon which the facility's physical plant is located;
 - iii. If more than one building is used for the facility, the location and perimeter dimensions of each building;
 - iv. The location of each driveway on the property;
 - v. The location and boundary dimensions of each parking lot on the property;
 - vi. The location and perimeter dimensions of each outdoor activity area;
 - vii. The location, type, and height of each fence and gate; and
 - viii. If applicable, the location of any swimming pool on the property;
- g. Except as provided in subsection ~~(A)(5)(i)(A)(5)(j)~~, a floor plan of each building to be used for child care services drawn to scale showing:
 - i. The drawing scale;
 - ii. The length and width dimensions for each indoor activity area;

- iii. The requested licensed capacity and applicable service classification for each indoor activity area;
- iv. The location of each diaper changing area;
- v. The location of each hand washing, utility, and three-compartment sink, toilet, urinal, and drinking fountain; and
- vi. The location and type of fire alarm system;
- h. Except as provided in subsection ~~(A)(5)(i)~~(A)(5)(j):
 - i. A copy of a certificate of occupancy issued for the facility by the local jurisdiction;
 - ii. Documentation from the local jurisdiction that the facility was approved for occupancy; or
 - iii. If the documents in subsections ~~(A)(5)(h)(i) and (ii)~~(A)(5)(i)(i) and (ii) are not available, the seal of an architect registered as prescribed in A.R.S. § 32-121 on the site plan required in subsection ~~(A)(5)(f)~~(A)(5)(g) and the floor plan required in subsection ~~(A)(5)(g)~~(A)(5)(h) verifying compliance with current local building and fire codes, local zoning requirements, and this Chapter;
- i. For an applicant providing child care services to three-year-old, four-year-old, five-year-old, or school-age children in a facility located in a public school, a set of final construction drawings or a school map showing:
 - i. The location of each school building;
 - ii. The location and dimensions of each outdoor activity area to be used by enrolled children;
 - iii. The length and width dimensions for each indoor activity area;
 - iv. The requested licensed capacity and applicable service classification for each indoor activity area; and
 - v. The location of each hand-washing sink, toilet, urinal, and drinking ~~fountain to be used by enrolled children;~~
- j. If the facility is located within one-fourth of a mile of agricultural land:
 - i. The names and addresses of the owners or lessees of each parcel of agricultural land located within one-fourth mile of the facility, and
 - ii. A copy of an agreement complying with A.R.S. § 36-882 for each parcel of agricultural land;
- k. The applicable fee in R9-5-206;

1. If the applicant is a business organization, a form provided by the Department that contains:
 - i. The name, street address, city, state, and zip code of the business organization;
 - ii. The type of business organization;
 - iii. The name, date of birth, title, street address, city, state, and zip code of each controlling person;
 - iv. A copy of the business organization's articles of incorporation, articles of organization, partnership documents, or joint venture documents, if applicable;
 - v. Documentation of good standing issued by the Arizona Corporation Commission and dated no earlier than three months before the date of the application; and
 - vi. A statement signed by the applicant stating:
 - (1) That each controlling person has not been denied a certificate or license to operate a child care group home or child care facility in this state or another state, and
 - (2) That each controlling person has not had a certificate or license to operate a child care group home or child care facility revoked in this state or another state for endangering the health and safety of children;

- m. If the applicant is a public school, a form provided by the Department that contains:
 - i. The name of the school district;
 - ii. The name, title, street address, city, state, and zip code of each responsible party, if the responsible party is an individual, or each individual in the group, if the responsible party is a group of individuals;
 - iii. A statement signed by the applicant stating:
 - (1) That each individual in subsection ~~(A)(5)(m)(ii)~~(A)(5)(n)(ii) has not been denied a certificate or license to operate a child care group home or child care facility in this state or another state, and
 - (2) That each individual in subsection ~~(A)(5)(m)(ii)~~(A)(5)(n)(ii) has not had a certificate or license to operate a child care group home

- or child care facility revoked in this state or another state for endangering the health and safety of children; and
- iv. A letter from the school district governing board or school district superintendent designating a signatory, if applicable;
 - n. If the applicant is a charter school, a form provided by the Department that contains:
 - i. The name, title, street address, city, state, and zip code of each responsible party, if the responsible party is an individual, or each individual in the group, if the responsible party is a group of individuals;
 - ii. A statement signed by the applicant stating:
 - (1) That each individual in subsection ~~(A)(5)(n)(i)~~(A)(5)(o)(i) has not been denied a certificate or license to operate a child care group home or child care facility in this state or another state, and
 - (2) That each individual in subsection ~~(A)(5)(n)(i)~~(A)(5)(o)(i) has not had a certificate or license to operate a child care group home or child care facility revoked in this state or another state for endangering the health and safety of children; and
 - iii. A letter from the school district governing board in which the charter school is located, the Arizona State Board of Education, or the Arizona State Board for Charter Schools, approving the applicant to operate the charter school; and
 - o. If the applicant is a governmental agency, a form provided by the Department that contains:
 - i. The name, title, street address, city, state, and zip code of each responsible party, if the responsible party is an individual, or each individual in the group, if the responsible party is a group of individuals;
 - ii. A statement signed by the applicant stating:
 - (1) That each individual in subsection ~~(A)(5)(o)(i)~~(A)(5)(p)(i) has not been denied a certificate or license to operate a child care group home or child care facility in this state or another state, and
 - (2) That each individual in subsection ~~(A)(5)(o)(i)~~(A)(5)(p)(i) has not had a certificate or license to operate a child care group home

or child care facility revoked in this state or another state for endangering the health and safety of children; and

- iii. A letter from the individual in the senior leadership position with the agency designating a signatory.

B. The Department requires a separate license and a separate application for:

- 1. Each facility owned by the same person at a different location, and
- 2. Each facility owned by a different person at the same location.

C. The Department does not require a separate application and license for a structure that is:

- 1. Located so that the structure and the facility:
 - a. Share the same street address, or
 - b. Can be enclosed by a single unbroken boundary line that does not encompass property owned or leased by another,
- 2. Under the same ownership as the facility, and
- 3. Intended to be used as a part of the facility.

R9-5-203. ~~Fingerprinting and Central Registry Requirements~~ Fingerprinting and Background Check

A. A licensee shall ensure that a staff member completes, signs, dates, and submits to the licensee, before the staff member's starting date of employment or volunteer service:

- 1. The form required in A.R.S. § 36-883.02(C); and
- 2. If required by A.R.S. § 8-804, the form in A.R.S. § 8-804(I).

B. A licensee shall for each staff member maintain a copy of a valid DPS fingerprint clearance card issued under A.R.S. § 41-1758.02 and a valid DES background check issued under in A.R.S. § 46-811.

B.C. ~~Except as provided in A.R.S. § 41-1758.03, a licensee shall ensure that each staff member submits to the licensee a copy of:~~

- ~~1. The staff member's valid fingerprint clearance card issued under A.R.S. Title 41, Chapter 12, Article 3.1; or~~
- ~~2. The fingerprint clearance card application that the staff member submitted to the Department of Public Safety under A.R.S. § 41-1758.02 within seven working days after the staff member's starting date of employment or volunteer service.~~

Except as provided in A.R.S. § 41-1758.03, a licensee shall ensure that each staff member, before starting date of employment or volunteer service, submits to the licensee a copy of the staff member's valid:

- 1. DPS fingerprint clearance card, front and back, and
- 2. DES background check.

~~C.D.~~ A licensee shall ensure that each staff member submits to the licensee a copy of the staff member's valid DPS fingerprint clearance card and DES background check each time the fingerprint clearance card and background check is issued or renewed.

~~D.E.~~ If a staff member possesses a fingerprint clearance card that was issued before the staff member became a staff member at the facility, a A licensee shall:

1. ~~Contact the Department of Public Safety within seven working days after the individual becomes a staff member to determine whether the fingerprint clearance card is valid; and~~ Contact DPS and DES to determine whether the fingerprint clearance card and background check is valid before an individual begins providing child care services; and
2. ~~Document this determination, including the name of the staff member, the date of contact with the Department of Public Safety, and whether the fingerprint clearance card is valid.~~ Document this determination, including the name of the staff member, the date of contact with DPS and DES, and whether the fingerprint clearance card and background check are valid.

~~E.F.~~ If required by A.R.S. § 8-804, before an individual's starting date of employment or volunteer service, a licensee shall comply with the submission requirements in A.R.S. § 8-804(C) for the individual.

~~F.G.~~ A licensee shall not allow an individual to be a staff member if the individual:

1. Has been denied a fingerprint clearance card under A.R.S. Title 41, Chapter 12, Article 3.1 and has not received an interim approval under A.R.S. § 41-619.55;
2. Has been denied a background check that indicates the individual is not eligible for employment due to violations identified pursuant to A.R.S. § 46-811;
- ~~2.3.~~ Receives an interim approval under A.R.S. § 41-619.55 but is subsequently denied a good cause exception under A.R.S. § 41-619.55 and a fingerprint clearance card under A.R.S. Title 41, Chapter 12, Article 3.1;
- ~~3.4.~~ Is a parent or guardian of a child adjudicated to be a dependent child as defined in A.R.S. § 8-201;
- ~~4.5.~~ Has been denied or had revoked a certificate to operate a child care group home or a license to operate a child care facility for care of children in this state or another state;
- ~~5.6.~~ Has been denied or had revoked a certification to work in a child care facility or a child care group home in this state or another state;
- ~~6.7.~~ If applicable, has stated on the form required in A.R.S. § 8-804(I) that the individual is currently under investigation for an allegation of abuse or neglect or has a substantiated

allegation of abuse or neglect and has not subsequently received a central registry exception according to A.R.S. § 41-619.57; or

~~7-8.~~ If applicable, is disqualified from employment or volunteer service as a staff member according to A.R.S. § 8-804 and has not subsequently received a central registry exception according to A.R.S. § 41-619.57.

H. Prior to a staff member's or volunteer's 18th birthday, the staff member or volunteer shall provide to the licensee copies of a valid DPS fingerprint clearance card and DES background check specified in subsection (C) and (D).

I. Beginning January 30, 2022, staff members shall comply with A.R.S. § 46-811(A) and subsection (F) by November 1, 2022.

R9-5-208. Changes Affecting a License

A. At least 30 calendar days before the date of a change in a facility's name, a licensee shall send the Department written notice of the name change and the Department shall issue an amended license that incorporates the name change but retains the anniversary date of the current license.

B. At least 30 calendar days before the date of an intended change in a facility's service classification, space utilization, or licensed capacity, a licensee shall submit a written request for approval of the intended change to the Department that includes:

1. The licensee's name;
2. The facility's name, street address, city, state, zip code, mailing address, and telephone number;
3. The name, telephone number, and fax number of a point of contact for the request;
4. The facility's license number;
5. The type of change intended:
 - a. Service classification,
 - b. Space utilization, or
 - c. Licensed capacity;
6. A narrative description of the intended change; and
7. The following additional information, as applicable:
 - a. If the intended change affects an activity area, the following information about each affected activity area, as applicable:
 - i. Identification of the activity area,
 - ii. Current and intended square footage,
 - iii. Current and intended operating hours,
 - iv. Current and intended service classification,

- v. Current and intended licensed capacity, and
 - vi. Whether the activity area has or will have a diaper changing area;
 - b. If the intended change is to increase licensed capacity, the square footage of the outdoor activity area; and
 - c. If the intended change includes an alteration or addition to the physical plant of a licensed facility, the following, as applicable:
 - i. If the facility is not located in a public school or if providing child care services to infants, one-year-old children, or two-year-old children in a facility located in a public school, the information required in ~~R9-5-201(A)(5)(f) and (g)~~ R9-5-201(A)(5)(g) and (h) showing the intended change; or
 - ii. If the facility is located in a public school and provides child care only for three-year-old, four-year-old, or five-year-old, or school-age children, a set of final construction drawings or a school map, including the information required in ~~R9-5-201(5)(i)~~ R9-5-201(5)(j) showing the intended change.
- C. If the intended change in subsection (B) includes an increase in the licensed capacity, a licensee shall submit the fee for an increase in licensed capacity in R9-5-206(C) with the written request for approval.
- D. If requesting a diaper changing area outside an infant room or indoor activity area to allow privacy for diapering an enrolled child with special needs, submit a written request for an approval; and
 - 1. For a license application, submit physical plant documents required by ~~R9-5-201(A)(5)(g)~~ R9-5-201(A)(5)(h) that designate the location of the proposed diaper changing area;
 - 2. For a licensed facility, submit a drawing of the proposed diaper changing area to the Department before installing the diaper changing area. Within 30 calendar days after the date of the receipt of the request, the Department shall send written notice to the licensee of approval or disapproval. If the proposed diaper changing area:
 - a. Complies with A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter and provides privacy for the enrolled child with special needs, the Department shall approve the proposed diaper changing area; or
 - b. Does not comply with A.R.S. Title 36, Chapter 7.1, Article 1 or this Chapter or provide privacy for the enrolled child with special needs, the Department shall

provide the licensee with the requirements necessary for the Department to approve the requested change; and

3. Not use a diaper changing area located outside of an activity area until the Department approves the use of the diaper changing area;
- E.** The Department shall review a request submitted under subsection (B) according to R9-5-202. If the intended change is in compliance with A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter and any applicable fee is submitted, the Department shall send the licensee written approval of the requested change or an amended license that incorporates the change but retains the anniversary date of the current license.
- F.** A licensee shall not implement any change described under subsection (B) until the Department issues an approval or amended license.
- G.** At least 30 days before the date of a change in ownership of a facility, a licensee shall send the Department written notice of the change. A new owner shall obtain a new license as prescribed in R9-5-201 before the new owner begins operating the facility.
- H.** A licensee changing a facility's location shall apply for a new license as prescribed in R9-5-201.
- I.** Within 30 calendar days after a change in a controlling person, a licensee shall send the Department written notice of the change that includes:
1. The name of the licensee;
 2. A description of the change made;
 3. The name, title, street address, city, state, and zip code of each controlling person;
 4. A statement that each controlling person has not been denied a certificate to operate a child care group home or a license to operate a child care facility for the care of children in this state or another state;
 5. A statement that each controlling person has not had a certificate to operate a child care group home or a license to operate a child care facility revoked in this state or another state for reasons that relate to endangerment of the health and safety of children;
 6. A statement that the information provided in the written notice is accurate and complete; and
 7. The signature of the licensee.
- J.** If the change in subsection (I) is a change in a controlling person who is a designated agent, a licensee shall include a copy of one of the following for the designated agent:
1. A U.S. passport,
 2. A birth certificate,
 3. Naturalization documents, or

4. Documentation of legal resident alien status.
- K.** Within 30 calendar days after changing a responsible party, a licensee shall send the Department written notice of the change that includes:
1. The name of the licensee;
 2. A description of the change made;
 3. The name, title, street address, city, state, and zip code of each responsible party, if the responsible party is an individual, or each individual in the group, if the responsible party is a group of individuals; and
 4. A statement signed by the licensee stating:
 - a. That each individual in subsection (K)(3) has not been denied a certificate or license to operate a child care group home or child care facility in this state or another state, and
 - b. That each individual in subsection (K)(3) has not had a certificate or license to operate a child care group home or child care facility revoked in this state or another state for endangering the health and safety of children.

ARTICLE 4. FACILITY STAFF

R9-5-402. Staff Records and Reports

- A.** A licensee shall maintain a file for each staff member containing:
1. The staff member's name, date of birth, home address, and telephone number;
 2. The staff member's starting date of employment or volunteer service;
 3. The staff member's ending date of employment or volunteer service, if applicable;
 4. The name and telephone number of an individual to be notified in case of an emergency;
 5. The staff member's written statement attesting to current immunity against measles, rubella, diphtheria, mumps, and pertussis;
 6. The form required in A.R.S. § 36-883.02(C);
 7. Documents required by ~~R9-5-203(A)(2)~~ or ~~(B)~~ R9-5-203;
 8. Documents required by R9-5-301;
 9. Documents required by R9-5-401, if applicable;
 10. If applicable:
 - a. The form required in A.R.S. § 8-804(I),
 - b. Documentation of the submission required in A.R.S. § 8-804 and the information received as a result of the submission, and
 - c. Documentation of training provided by a licensee as required by R9-5-403;

11. A copy of any current license or certification required by A.R.S. Title 36, Chapter 7.1, Article 1, or this Chapter; and
 12. Documentation of the requirements in A.R.S. § 36-883.02(D).
- B.** A licensee shall ensure that, for a staff member who is currently working at the facility, the staff member's information required by:
1. Subsections (A)(1) through (11) is maintained in a single location on facility premises, and
 2. Subsection (A)(12) is maintained and provided to the Department within two hours of the Department's request.
- C.** A licensee shall ensure that, for an individual who is not currently working at the facility, the information required in subsections (A)(1) through (12) is:
1. Maintained for 12 months after the date the individual last worked at the facility, and
 2. Provided to the Department within two hours of the Department's request.