

ARIZONA DEPARTMENT OF CHILD SAFETY (F-16-0902)

Title 6, Chapter 5, Article 74, Licensing Process and Licensing Requirements for Child Welfare Agencies Operating Residential Group Care Facilities and Outdoor Experience Programs



**GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT**

MEETING DATE: October 4, 2016

AGENDA ITEM: F-4

TO: Members of the Governor's Regulatory Review Council ("Council")

FROM: Shama Thathi, Staff Attorney

DATE : September 16, 2016

SUBJECT: ARIZONA DEPARTMENT OF CHILD SAFETY (F-16-0902)
Title 6, Chapter 5, Article 74, Licensing Process and Licensing Requirements for
Child Welfare Agencies Operating Residential Group Care Facilities and Outdoor
Experience Programs

COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

The purpose of the Arizona Department of Child Safety (Department) is "to protect children as provided in section 8-451, Arizona Revised Statutes." Laws 2014, 2nd S.S., Ch.1, § 162. On May 29, 2014, the Legislature created the Department and the responsibilities and authority in Article 74 for child welfare agency were transferred from Department of Economic Security (DES) to the Department.

This five-year-review report covers 71 rules in A.A.C. Title 6, Chapter 5, Article 74, which pertain to the formation, operation, and regulation of child welfare agencies operating residential group care facilities or outdoor experience programs. The rules, as written, became effective at various times between 1997 and 2007.

According to A.R.S. § 8-501(A)(2), child welfare agencies are licensed by the Department to operate residential group care facilities or programs that receive children for care and maintenance for 24-hour social, emotional, or educational supervised care; receive children who have been adjudicated as a delinquent or dependent; or provide care for unmarried mothers and their children. A child welfare agency may also be classified as an Outdoor Experience Program, meaning that it is located in a cabin or portable structure, and primarily uses the outdoors to provide children recreational and educational experiences in group living. As of 2016, there are 116 agencies licensed by the Department to provide residential group care, 12 that provide shelter care, and six that provide both residential group care and shelter care.

Proposed Action

The Department intends to complete a Notice of Proposed Rulemaking by May 2017 and submit a Notice of Final Rulemaking to the Council by September 2017.

Summary of Reasons for the Proposed Action

The Department indicates that the rules need to be amended to improve effectiveness, consistency with other statutes and rules, and to make the rules more clear, concise, and understandable.

Exemption or Request and Approval for Exception from the Moratorium

The Governor's Office granted an approval for an exception from the moratorium on January 20, 2016.

Substantive or Procedural Concerns

None.

Analysis of the agency's report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:

1. Has the agency certified that it is in compliance with A.R.S. § 41-1091?

The Department has certified that it is in compliance with A.R.S. § 41-1091.

2. Has the agency analyzed the rules' effectiveness in achieving their objectives?

Yes. The Department indicates that the rules need to be revised and adopted into Title 21, Child Safety, of the Arizona Administrative Code. Most of the rules should be amended to eliminate outdated citations and terms and procedures that are no longer used by the Department's Office of Licensing and Regulation (OLR). A number of the rules should also be modified to reflect that OLR completes the health and safety inspections instead of the Arizona Department of Health Services (DHS). In addition, references to DES should be removed and replaced with those that refer to the Department. The Department has proposed the following specific actions:

- R6-5-7407 should address requirements for tribal group homes and for child welfare agencies not contracted with the State.
- R6-5-7414 should reference the updated requirements related to fingerprinting and criminal background checks to comply with current statute.
- R6-5-7415 should be repealed from Article 74, and not included in the new draft rules covering child welfare agencies because it is ineffective in achieving the overall objective of the rules.
- R6-5-7424 and R6-5-7425 can be made more effective by reevaluating restrictions in terms of the type and size of a child welfare agency.

- R6-5-7426 can be made more effective by reevaluating requirements in light of Arizona Department of Administration contract requirements.
- R6-5-7427 and R6-5-7428 should be modified to reflect confidentiality requirements in A.R.S. § 8-807.
- R6-5-7431 should specify that staff members, who do not have a valid fingerprint card, must get fingerprinted within seven days of their date of hire, as required by A.R.S. § 46-141. The rule can also be improved by revising qualifications of staff to reflect different levels of care.
- R6-5-7433 should list the training requirements for part-time staff, reevaluate restrictions on training delivery methods, and specify the type of training required.
- R6-5-7437 can be made more effective by updating staff-child ratios to reflect current best practice.
- R6-5-7440 should require an agency to only repeat the child’s orientation process if the child returns to care in the same facility within a designated time period.
- R6-5-7452 should add “thermometer” to the list of first aid supplies that agencies must maintain.
- R6-5-7459, R6-5-7464, and R6-5-7465 can be made more effective by updating requirements to comply with current building code, zoning, and fire requirements.

3. Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?

Yes. The Department indicates that it received numerous written comments on an initial draft of child welfare agency licensing rules circulated within the last two years. The public comments were received from August 18, 2015 to September 23, 2015 through the Department’s website. In addition, comments were received at two public hearings, September 21, 2015 in Tucson and September 22, 2015 in Phoenix. On October 21, 2015, the Department held a follow-up meeting with key stakeholders and partners to discuss the general themes of the comments received. Attached as a supplement to the report are the written comments, a copy of the issue matrix that the Department utilized to facilitate the follow-up meeting, and notes from the two public hearings.

The written comments included several areas of concern. Many commenters thought the definitions were confusing and unclear. The draft rules requiring a governing body and a chief financial officer were viewed unfavorably for not taking into consideration the different sizes of child welfare agencies. The definition of residential group care facility as an entity licensed for more than five children was criticized. A requirement that the staff be awake and available 24 hours received negative feedback due to the cost associated with such a requirement.

The draft rules were viewed unfavorably for removing the alternative method of compliance found in R6-5-7415. The criteria for applying for a satellite facility by having no outstanding issues or investigations at the applicant’s existing facility were considered to be unrealistic. Commenters also criticized the draft rules regarding the reasonable and prudent parent standard for not addressing how the standard would apply to different ages of children. Required staff training was disapproved for not distinguishing between the training needed for

different levels of care. The requirement of communication with the school district regarding the location of the residential group care facility and enrolled youth in their care was condemned for being out of the scope of A.A.C. Title 6, Chapter 5. Furthermore, the draft rules regarding provisional licenses were disapproved for not providing specific timeframes and conditions.

The Department has considered these criticisms and plans to incorporate some of the suggestions. For instance, a governing body requirement is changing and a chief financial officer will no longer be required. The alternative method of compliance will be made obsolete with the revised rules. In addition, the Department expects to hold a meeting with the stakeholders to review draft rules prior to publishing a Notice of Proposed Rulemaking. Staff believes the Department is promptly and adequately addressing public concerns.

4. Has the agency analyzed whether the rules are authorized by statute?

Yes. As general authority, the Department cites to A.R.S. § 8-453(A)(5), under which the Department shall “[a]dopt rules to implement the purposes of the department and the duties and powers of the director.”

The Department also cites specific authority for the rules. A.R.S. § 8-503(4)(a) states that the Department shall “[e]stablish rules, regulations, and standards for...[l]icensing of child welfare agencies.”

5. Has the agency analyzed the rules’ consistency with other rules and statutes?

Yes. The Department indicates that combining the same requirements for child placing agencies and child welfare agencies into one article, and retaining separate articles for different requirements, can provide consistency for Articles 69 and 74. Further, the Department notes that the rules are consistent with other rules and statutes with the following specific exceptions:

- R6-5-7401 contains references to outdated statutes.
- R6-5-7402 should be revised to reflect the current requirements in A.R.S. § 41-1002
- R6-5-7417 contains outdated citations. In particular, A.R.S. § 8-546.01(C) should be replaced with A.R.S. § 8-546(C).
- R6-5-7420 contain references to outdated statutes.
- R6-5-7420 and R6-5-7431 do not reflect current fingerprint requirements in A.R.S. § 41-1758.07 or A.R.S. § 46-141.
- R6-5-7433 should reflect current training timeframes in A.R.S. § 8-509.
- R6-5-7436 does not reflect new federal requirements for victims for sex trafficking in Public Law 113-183, Preventing Sex Trafficking and Strengthening Families Act.
- R6-5-7444, R6-5-7445, R6-5-7446, R6-5-7448, R6-5-7450, and R6-5-7451 should be revised to reflect the reasonable and prudent parent standard and requirements in Public Law 113-183, Section 111, Supporting Normalcy for Children in Foster Care.
- R6-5-7454 is inconsistent with R21-8-108, a similar provision regarding storage of medications.
- R6-5-7460 contains references to outdated statutes.
- R6-5-7466 is inconsistent with R21-8-113.

- R6-5-7467 contains references to outdated statutes.

6. Has the agency analyzed the current enforcement status of the rules?

Yes. The Department indicates that the rules are enforced as written to the extent they do not conflict with state or federal law.

7. Has the agency analyzed whether the rules are clear, concise, and understandable?

Yes. The Department has identified the following changes that would make the rules more clear, concise, and understandable:

- R6-5-7401 should be amended to effectively promote a uniform understanding of terminology used for child placing agency and child welfare agency licensing rules, the Department proposes to combine all definitions into one article that applies to both entities in its new rules.
- R6-5-7434 should be rewritten to provide clarification as to what constitutes an unusual incident, and which unusual incidents must be reported to the Department.
- R6-5-7437 should clarify the meaning of the term “coverage.”
- R6-5-7438 can be made clearer by defining the term “vocational training program” in R6-5-7401.
- R6-5-7441 should be revised to avoid duplication of the child’s service plan.
- R6-5-7447 and R6-5-7461 should clarify the requirements for a sleeping area.
- R6-5-7457 can be made clearer by defining the term “internal body cavity search.”
- R6-5-7467 should be amended to clarify that an outing log should document activities that are not part of the daily routine, which could be any number of trip rather than just the two examples provided.
- R6-5-7469, R6-5-7470, and R6-5-7471 can be made clearer by separating and reducing the amount of subject matter in each rule and moving these requirements to a new Chapter.

8. Has the agency analyzed whether:

a. The rules are more stringent than corresponding federal law?

Yes. The Department indicates that the rules are not more stringent than corresponding federal law, 42 U.S.C. § 675, which provides definitions related to federal payments for foster care and adoption assistance.

b. There is statutory authority to exceed the requirements of federal law?

Not applicable.

9. For rules adopted after July 29, 2010, has the agency analyzed whether:

- a. **The rules require issuance of a regulatory permit, license or agency authorization?**

Not applicable, as the rules were adopted prior to July 29, 2010.

- b. **It is in compliance with the general permit requirements of A.R.S. § 41-1037 or explained why it believes an exception applies?**

Not applicable.

10. **Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?**

Yes. The Department indicated that DES did not take any action between October 4, 2011, when the previous five-year-review report was approved by the Council, and May 29, 2014. Since May 29, 2014, when the Department was created, it has completed an initial draft of the rules.

11. **Has the agency included a proposed course of action?**

Yes. As mentioned above, the Department plans to file a Notice of Proposed Rulemaking by May 2017 and submit the Notice of Final Rulemaking to the Council by September 2017.

Conclusion

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. This analyst recommends the report be approved.



GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M

MEETING DATE: October 4, 2016

AGENDA ITEM: F-4

TO: Members of the Governor's Regulatory Review Council ("Council")

FROM: GRRC Economic Team

DATE : September 16, 2016

SUBJECT: **ARIZONA DEPARTMENT OF CHILD SAFETY (F-16-0902)**
Title 6, Chapter 5, Article 74, Licensing Process and Licensing Requirements for
Child Welfare Agencies Operating Residential Group Care Facilities and Outdoor
Experience Programs

I reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

1. Economic Impact Comparison

The economic, small business, and consumer impact statement (EIS) from the most recent rulemaking was available for all of the rules contained in the five-year-review report.

Article 74 describes the rules pertaining to the formation, operation and regulation of child welfare agencies operating residential group care facilities or outdoor experience programs. The rules allow for the Department to set licensing standards, regulate child welfare agencies to correct identified problems, and provide businesses with the information required to license and operate a child welfare agency in Arizona.

Currently, there are 116 licensed Child Welfare Agencies in Arizona; 98 of them are residential group care facilities, 12 are licensed as shelters, and 6 are licensed for both.

2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?

The Department indicates that the current rules continue to pose the least burden and cost on child welfare agencies in Arizona.

Even so, the Department commissioned a study by an independent consulting group, which will be used to consider further revision to the rules to ensure the least burden of compliance costs to persons regulated by these rules.

3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?

No analysis was submitted to the agency by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states.

4. Conclusion

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.



Arizona Department of Child Safety

Douglas A. Ducey
Governor

Gregory McKay
Director

June 23, 2016

Ms. Nicole A. Ong
Chair, Governor's Regulatory Review Council
100 North 15th Avenue, Suite 402
Phoenix, Arizona 85007

Re: Five-Year Review Report for A.A.C. Title 6, Chapter 5, Article 74

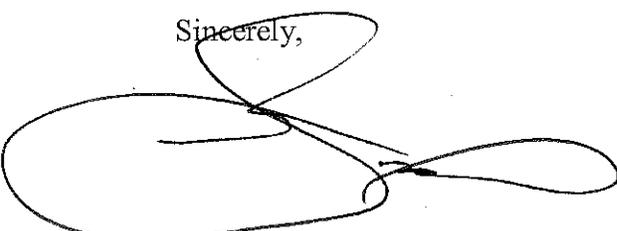
Dear Ms. Ong:

In compliance with A.R.S. § 41-1056, enclosed is the Department's five-year review of A.A.C. Title 6, Chapter 5, Article 74, Licensing Process and Licensing Requirements for Child Welfare Agencies Operating Residential Group Care Facilities and Outdoor Experience Programs. All of the rules in Article 74 have been reviewed. None of them have been rescheduled for review under A.R.S. § 41-1056(H), nor are they being requested to expire under A.R.S. § 41-1056(J). Also enclosed is a copy of the rules being reviewed as well as the public comments the Department received for the draft rules posted on the Department's website that would replace Title 6, Chapter 5, Article 74.

The Department is in compliance with A.R.S. § 41-1091.

The Department's contact person who can answer questions about this report is Carrie Senseman, Lead Rules Analyst, at (602) 255-2534 or csenseman@azdes.gov.

Sincerely,



Gregory McKay
Director

Enclosures



ARIZONA DEPARTMENT OF CHILD SAFETY
Five-Year Review Report
Title 6. Economic Security
Chapter 5. Social Services

Article 74.

Licensing Process and Licensing Requirements for Child Welfare Agencies Operating Residential Group Care Facilities and Outdoor Experience Programs

I. INTRODUCTION

History

Prior to May 29, 2014, the rules in Article 74 were used by the Division of Children, Youth, and Families (DCYF) within the Arizona Department of Economic Security. The rules were first adopted effective on July 1, 1997. DES completed an emergency rulemaking for Article 74 in June of 2006 to meet the developmental needs of children and young adults who require preparation for adult self-sufficiency. The changes made to Article 74, in the emergency rulemaking, became effective in May of 2007. Specifically, R6-5-7401, R6-5-7437, R6-5-7447, and R6-5-7465 were amended.

A.R.S. § 8-451, effective May 29, 2014, created the Arizona Department of Child Safety, “the Department” or “DCS” and the responsibilities and authority in Article 74 for Child Welfare Agency licensing were transferred to the new state agency. Within DCS, the Office of Licensing and Regulation, (OLR) administers these rules. Arizona Laws, 2014, Second Special Session, Chapter 1, Section 157, Succession, (C) states “Administrative rules and orders that were adopted by the Department of Economic Security continue to be in effect until superseded by administrative action by the Department of Child Safety.”

Arizona Laws 2014, Second Special Session, Chapter 1, Section 158, provided the Department an exemption from the rulemaking requirements of Title 41, Chapter 6, for 18 months after the effective date of the legislation creating the new agency (May 29, 2014).

During that time, the Department was able to create an initial draft of Child Welfare Agency Licensing rules and post them on the Department website for public comments from August 18, 2015 through September 23, 2015. A public hearing was held in Tucson on September 21, 2015 and another in Phoenix on September 22, 2015 to obtain written and oral comments on the draft rules. A follow-up meeting was held with key stakeholders and partners on October 21, 2015 and general themes of the comments received were discussed.

Due to the degree of subject matter involved with the balance of the conducting of the Department's rulemakings for other responsibilities, the rules for Child Welfare Agency licensing were not completed by the close of the exemption period.

The Department requested an exception to Executive Order 2015-01, and was approved on January 20, 2016, by the Governor's Office to conduct regular rulemaking for rules covering the licensing of Child Placing Agencies and Child Welfare Agencies. Work has begun to address oral and written comments received last year and provide a revised draft for informal public review and necessary adjustments prior to the filing of a Notice of Proposed Rulemaking.

Subject Matter of Article 74

Child Welfare Agencies, as defined by A.R.S. § 8-501(A)(1), are licensed by the Department to operate residential group care facilities or programs that receive children for care and maintenance; receive children for 24-hour social, emotional, or educational supervised care; receive children who have been adjudicated as a delinquent or dependent; or provide care for unmarried mothers and their children. A Child Welfare Agency may also be classified as an Outdoor Experience Program, meaning that it is located in a cabin or portable structure, such as a tent or covered wagon, and primarily uses the outdoors to provide children recreational and educational experiences in group living.

The children placed in a Child Welfare Agency residential group care facility, are typically in the custody of and placed by the Department; however, many licensed facilities also receive and care

for children placed by private persons (such as parents or guardians); children placed by various Arizona Native American Tribes; children placed by the juvenile courts; or children placed by out-of-state agencies.

As of 2016 there were 116 agencies licensed by the Department to provide residential group care, 12 that provide shelter care, and six that provide both residential group care and shelter care in the State of Arizona. Article 74 contains rules pertaining to the formation, operation and regulation of Child Welfare Agencies operating residential group care facilities or outdoor experience programs.

II. ANALYSIS OF RULES

A. STATUTORY AUTHORITY

1. GENERAL AUTHORITY

The Department is granted general authority to make rules under A.R.S. § 8-453(A)(5).

2. SPECIFIC AUTHORITY

The Department is granted specific authority to make rules for Child Welfare Agencies under A.R.S. § 8-503(4)(a).

B. OBJECTIVES

The rules in Article 74 are necessary because they protect vulnerable children in care. In 2015, the Department received over 200 reports (as defined in A.R.S. § 8-455) of alleged child abuse or neglect, (as defined in A.R.S. § 8-201), concerning children placed in foster homes and residential group care facilities. During the same year, the Department received over 400 other concerns for foster homes and residential group care facilities. The rules in Article 74 provide the Department the authority to set licensing standards for Child Welfare Agencies, and the authority to regulate the Child Welfare Agencies to correct identified problems.

The rules in Article 74 are also necessary in order to provide businesses with the information required to license and operate a Child Welfare Agency in the State of Arizona. There are currently 116 licensed Child Welfare Agencies in the State of Arizona. A total of 98 are licensed as residential group care facilities, 12 are licensed as shelters, and six are licensed for both.

In the past, some Child Welfare Agencies were licensed to operate outdoor experience programs. The rules in Article 74 provide specific guidance for businesses seeking licensure for each of these types of operations.

Finally, the rules in Article 74 are necessary, because they provide the public with information about the essential services and programs of the Department and the standards of operation that Child Welfare Agencies are responsible to uphold.

R6-5-7401 Definitions

The objective of this rule is to promote and ensure uniform understanding of terminology used by the Department by defining 78 terms used throughout this Article.

R6-5-7402 Request for Initial Application – New Applicant

The objective of this rule is to establish the procedure for initiating the Child Welfare Agency licensing process, including the responsibilities of both the applicant and the Department.

R6-5-7403 Letter of Intent – New Applicant

The objective of this rule is to establish the requirement for an applicant to submit a letter of intent to the Department for a new license. This rule also provides a description of the specific information that is required to be contained in the letter. Furthermore, this rule establishes the Department's responsibility to respond to the letter of intent.

R6-5-7404 The Licensing Consultation; Time for Completion of Application

The objective of this rule is to establish the Department's responsibility to conduct a licensing consultation with a new applicant. This rule also explains the information that is to be covered during the consultation. Furthermore, this rule establishes the beginning of the administrative completeness review time frame that is to be followed in regard to the receipt and processing of an initial license.

R6-5-7405 Complete Application; Initial License – New Applicant

The objective of this rule is to establish the information and supporting documentation that is required to be submitted as part of an initial license application package. This rule further establishes that all of the identified information and supporting documentation must be submitted for an application to be considered complete. The rule informs the public and the applicant that the Department may ask for additional information to determine the applicant's fitness to hold a license or an operating certificate.

R6-5-7406 Site Inspection

The objective of this rule is to establish the Department's responsibility to conduct a site visit after receiving a complete application package. This rule also provides specific information in regard to the areas of focus during a site visit, plus the Department's requirements in regard to the administrative completeness review time frame and providing written notification of administrative completeness or deficiency to the applicant.

R6-5-7407 Licensing Study

The objective of this rule is to establish the Department's requirement to summarize the results of the site visit, and other information gathered during the licensing process in a written licensing study, which shall be the basis for the licensing decision. The rule also informs the applicant that a copy of the licensing study may be obtained from the Department.

R6-5-7408 Licensing Decision: Issuance; Denial; Time-Frames

The objective of this rule is to establish the Department's responsibility to issue a written licensing decision explaining whether the Licensing Authority will grant or deny a license, and the terms of the license. This rule also provides the Department's substantive review time frame requirement for issuing an initial license.

R6-5-7409 Licenses and Operating Certificates: Form; Term; Nontransferability

The objective of this rule is to establish the information the Department is required to place on a license or operating certificate. This rule also establishes the terms, expiration, and that a license and an operating certificate cannot be transferred or assigned. The rule defines the circumstances of what is considered a "change in ownership."

R6-5-7410 Licensed Agency: Application for an Operating Certificate for an Additional Satellite Facility

The objective of this rule is to establish the requirements for the applicant who initiates the request, and the Department's response for the processing and licensing an additional satellite facility.

R6-5-7411 Application for Renewal of License and Operating Certificates

The objective of this rule is to specify the information and documentation a licensee must submit to annually renew a license and if applicable, any operating certificates.

R6-5-7412 Renewal of License and Operating Certificates: Site Inspection; Time-frames; Standard for Issuance

The objective of this rule is to establish Department requirements for receiving and processing a license renewal application. This rule also provides the Department's administrative completeness and substantive review time frame requirements for issuing a renewed license.

R6-5-7413 Notification to Licensing Authority of Changes Affecting License; Staff Changes

The objective of this rule is to establish the requirements for the notification to the Department of any planned substantial changes to the licensed agency, and provides the circumstances of what constitutes a substantial change. This rule also establishes the requirements for an agency to submit a completed Central Registry form to the Department for the hiring or separation of each paid staff member.

R6-5-7414 Amended License or Operating Certificate

The objective of this rule is to establish the Department's requirements in regard to issuance of an amended license or operating certificate.

R6-5-7415 Alternative Method of Compliance

The objective of this rule is to establish the conditions of approving and the requirements for the processing of an alternative method of compliance.

R6-5-7416 Monitoring

The objective of this rule is to establish the Department's requirement to monitor the ongoing operations of agencies and facilities. This rule also provides examples of the types of activities that may be monitored. The rule identifies the expectations of an agency cooperating with the monitoring functions of the Department.

R6-5-7417 Complaints; Investigations

The objective of this rule is to establish the Department's responsibilities, requirements and methods in response to complaints received about a licensee, agency or facility.

R6-5-7418 Corrective Action

The objective of this rule is to establish Department criteria for use of a corrective action plan for noted deficiencies. The rule also states the requirements for an agency to write and submit a plan to the Department, and the Department's subsequent process for receiving, reviewing, and approving the plan.

R6-5-7419 Provisional License

The objective of this rule is to establish the Department's authority to issue a provisional license in response to an agency or facility that temporarily cannot meet the standards prescribed in Article 74. This rule also provides criteria regarding the Department's decision to create and process a provisional license.

R6-5-7420 Denials, Suspension, and Revocation of a License or Operating Certificate

The objective of this rule is to establish the Department's authority to deny, suspend, or revoke a license or operating certificate and clarifies the circumstances of when the Department may deny, suspend, or revoke a license or operating certificate. This rule also establishes the terms and requirements for the Department to deny, suspend, or revoke a license or operating certificate.

R6-5-7421 Adverse Action; Procedures; Effective Date

The objective of this rule is to establish Department procedures for taking an adverse action against a licensee. The required information in the written notification of the adverse action from the Department to the licensee are included in the rule. This rule also explains which adverse actions are not appealable, and defines when an adverse action takes effect.

R6-5-7422 Appeals

The objective of this rule is to establish the rights of an applicant to appeal the denial of a license, or a licensee to appeal an adverse action.

R6-5-7423 Statement of Purpose; Program Description and Evaluation; Compliance With Adopted Policies; Client Rights; Single Category of Care

The objective of this rule is to establish the requirements for an agency or facility to have a written statement of purpose; a written description of all services; to evaluate the program annually; to comply with its adopted policies; to have a statement of client rights; and to ensure that it does not combine its child welfare program with other forms of care.

R6-5-7424 Governing Body

The objective of this rule is to establish the requirement that an agency shall have a governing body. This rule also identifies specific requirements and responsibilities of the governing body.

R6-5-7425 Business and Fiscal Management; Annual Audit

The objective of this rule is to establish requirements for an agency's business and fiscal management practices. This rule also establishes the requirement that an agency obtain an annual, fiscal year-end audit by an independent certified public accountant, and describes the type of information that shall be included in an audit.

R6-5-7426 Insurance Coverage

The objective of this rule is to establish the minimum amounts of coverage that an agency shall carry in its liability and vehicle insurance policies.

R6-5-7427 Confidentiality

The objective of this rule is to establish the requirements in regard to maintaining the confidentiality of records and information concerning children in care and their families. The rule also describes criteria for an agency to release or withhold information from a child's record.

R6-5-7428 Children's Records: Contents, Maintenance, Destruction

The objective of this rule is to establish the requirement that an agency shall establish and maintain a separate case record for each child in care. This rule also provides a specific list of information that shall be maintained in the child's case record. Furthermore, this rule provides requirements for maintaining the case records of children, and for the destruction of these records.

R6-5-7429 Grievances

The objective of this rule is to establish the requirements for the receipt, consideration, and resolution of grievances brought to the licensee by children in care and their parents. The rule also establishes the requirements for the agency to establish a log for documenting grievances and the retention of grievance records.

R6-5-7430 Staff Management and Staff Records

The objective of this rule is to establish the requirements for managing staff and for maintaining staff records. This rule addresses the requirement to have written staff policies and procedures and the components of these documents; the requirement to maintain a personnel file for each paid and unpaid staff member, as well as the specific information to be included in each file. The rule also prescribes the proper maintenance and storage requirements of agency personnel files.

R6-5-7431 General Qualifications for Staff

The objective of this rule is to establish the required general qualifications of staff, including fingerprinting, passing a criminal records check and obtaining a physical examination before providing services to children and their families.

R6-5-7432 Qualifications for Specific Positions or Tasks; Exclusions

The objective of this rule is to establish the qualifications, and describe the tasks for several specific positions identified within the agency. This rule also addresses exclusions for educational attainment requirements for specified circumstances.

R6-5-7433 Orientation and Training for Staff

The objective of this rule is to establish the requirements for an agency in regard to providing an initial orientation and the number of ongoing training hours, and acceptable topics for staff members.

R6-5-7434 Notification of Unusual Incidents and Other Occurrences

The objective of this rule is to identify what constitutes an unusual incident and establish the requirements for an agency to document and the timeframes for reporting unusual incidents and other occurrences to the Department.

R6-5-7435 Investigations of Child Maltreatment

The objective of this rule is to establish the requirement for an agency to have written procedures for handling alleged and suspected incidents of child maltreatment. The rules also describes the minimum provisions that must be included in these procedures and the requirement for all staff to read and sign a statement describing the duty to report alleged and suspected incidents of child maltreatment, as required in statute.

R6-5-7436 Runaways and Missing Children

The objective of this rule is to establish the requirement for an agency to have a written policy and procedure for handling runaways and missing children, and to describe the minimum provisions that must be included in the policy.

R6-5-7437 Staff Coverage; Staff-child Ratios

The objective of this rule is to establish the requirement for an agency to have a written plan describing the staffing for each facility and specifies the required staff coverage schedule and prescribes the number of staff to child ratios.

R6-5-7438 Admission and Intake; Criteria; Process; Restrictions

The objective of this rule is to establish admission and intake process requirements for an agency to be reflected in its written policies and procedures. This rule also addresses restrictions for admissions and procedures for handling emergency admissions.

R6-5-7439 Information and Services Provided to the Placing Agency or Person

The objective of this rule is to specify the required information, as well as the deadline by which an agency must provide this information; including but not limited to a child in care's education program, services and treatment strategies, and the agency's visitation and communication policy; to a placing agency or person.

R6-5-7440 Orientation Process for a Child in Care

The objective of this rule is to establish the requirement for an agency to provide an orientation to each child admitted into care, and provides specific requirements as to what information and components shall be included in the orientation as well as the time frame for completion.

R6-5-7441 Child’s Service Plan: Preparation; Review; Planning Participants

The objective of this rule is to establish the requirement for a personalized service plan for each child in care; including timeframes for plan development and review, as well as requirements for the content and who participates in the implementation of each service plan.

R6-5-7442 Discharge; Discharge Summary

The objective of this rule is to establish the requirement for an agency to have written policy and procedures for planned and unplanned discharges of children in care. This rule also provides specific requirements and timeframes in regard to the completion of a discharge summary.

R6-5-7443 Personal Care of Children

The objective of this rule is to establish the requirements of the licensed facility for providing for the personal care and hygiene of children in care.

R6-5-7444 Children’s Clothing and Personal Belongings

The objective of this rule is to establish the requirements in regard to the management of clothing and belongings of children in care.

R6-5-7445 Children’s Money; Restitution

The objective of this rule is to establish the requirements and practices that an agency is to follow in order to provide opportunities for children in care to develop a sense of the value of money.

R6-5-7446 Nutrition, Menus, and Food Service

The objective of this rule is to establish the requirements and standards for a licensed facility in regard to nutrition, menus and food services provided for children in care.

R6-5-7447 Sleeping Arrangements

The objective of this rule is to establish the requirements for sleeping arrangements in licensed facilities.

R6-5-7448 Visitation, Outings, Mail and Telephones

The objective of this rule is to establish the requirements in regard to visitation, mail, telephone calls, and other forms of communication for children in care. This rule also establishes the requirement that an agency have a written policy and procedures for situations when a child temporarily leaves the facility on a visit or outing with a person other than a staff member.

R6-5-7449 Educational and Vocational Services; Work Assignments

The objective of this rule is to establish the requirements for meeting each child’s educational needs, possible enrollment in vocational services, and participation in work assignments for the purpose of instructional experience at the licensed facility.

R6-5-7450 Recreation, Leisure, Cultural Activities, and Community Interaction

The objective of this rule is to establish the requirements for providing and having recreational, cultural, religious, and leisure activities and opportunities available for children in care.

R6-5-7451 Religion, Culture, and Ethnic Heritage

The objective of this rule is to establish the requirements in regard to the religious, cultural, and ethnic needs of children in care.

R6-5-7452 Medical and Health Care

The objective of this rule is to establish the requirements for meeting the general medical, dental, and health care needs of children in care. The rule also describes the contents and need for the availability of a first-aid kit on the facility premises.

R6-5-7453 Medications

The objective of this rule is to establish the requirements for written policies and procedures for the administration and tracking of medications for children in care.

R6-5-7454 Storage of Medications

The objective of this rule is to establish the requirements for storing medications at a licensed facility.

R6-5-7455 Children's Medical and Dental Records

The objective of this rule is to establish the requirements for maintaining a comprehensive health record for each child in care.

R6-5-7456 Behavior Management

The objective of this rule is to establish the requirements for written policies and procedures for using behavior management techniques at a facility. The rule also describes restrictions for behavior management practices and the methods the Department will use to investigate a violation of these standards.

R6-5-7457 Body Searches

The objective of this rule is to establish the requirements for written policies and procedures for the use of body searches at a licensed facility.

R6-5-7458 Buildings; Grounds; and Water Supply

The objective of this rule is to establish the requirements in regard to maintenance and improvements of the building exterior and the grounds of a licensed facility. This rule also establishes requirements in regard to a facility's water supply.

R6-5-7459 Building Interior

The objective of this rule is to establish the physical plant requirements such as the air temperature, electrical safety and lighting for the interior of a licensed facility for children in care.

R6-5-7460 Kitchens; Food Preparation; and Dining Areas

The objective of this rule is to establish the requirements for the maintenance and operation of a kitchen of a licensed facility. This rule also provides requirements for food preparation, equipment, and dining areas.

R6-5-7461 Sleeping Areas and Furnishings

The objective of this rule is to establish the requirements in regard to providing a designated sleeping area for children in care with an appropriate location and furnishings.

R6-5-7462 Bathrooms

The objective of this rule is to establish the requirements in regard to the number of fixtures, maintenance, and use of bathrooms at a licensed facility.

R6-5-7463 Other Facility Space; Staff Quarters

The objective of this rule is to establish the requirements to have administrative office space and staff quarters separate from children's areas.

R6-5-7464 Fire, Emergency, and Fire Prevention

The objective of this rule is to establish the requirements for written policies and procedures for handling emergency situations at a licensed facility, and educating children and staff on these procedures. This rule also provides requirements for fire prevention and control.

R6-5-7465 General Safety

The objective of this rule is to establish the requirements for ensuring the general safety of children in care in a licensed facility.

R6-5-7466 Swimming Areas

The objective of this rule is to establish the requirements for licensed facilities that have swimming areas, including structural, the presence of life-saving equipment and water quality.

R6-5-7467 Access; Transportation; Outings

The objective of this rule is to establish the requirements in regard to facility accessibility, transportation of children, outings, and vehicles used for transportation of children in care.

R6-5-7468 Special Provisions for Shelter Care Facilities

The objective of this rule is to establish requirements that are specific to shelter care facilities. The rule references other rules in this Article that also apply to or are exempt from shelter care facilities when possible.

R6-5-7469 Special Provisions and Exemptions for Outdoor Experience Programs

The objective of this rule is to establish the requirements, special provisions, and exemptions specific to an outdoor experience program. The rule references other rules in this Article that apply to an outdoor experience program when possible.

R6-5-7470 Planning Requirements for Outdoor Experience Programs

The objective of this rule is to establish the outdoor experience program requirements for planning a trip, such as the itinerary and pre-departure procedures.

R6-5-7471 Special Physical Environment and Safety Requirements for Outdoor Experience Programs

The objective of this rule is to establish the requirements for an outdoor experience program in regard to general hazards, overall safety, and the physical environment for sleeping, using outdoor toilet areas and for meal preparation and serving.

Appendix 1

The objective of this Appendix is to illustrate the distinctions between the type of services offered and other unique characteristics of a behavioral health agency versus a Child Welfare Agency.

C. EFFECTIVENESS

Article 74 was adopted in 1997, and some rules were amended in 2000 and 2007.

R6-5-7401 Definitions can be made more effective by revising citations to match current State statute; for example, definition 49. Out of Home Placement, cites A.R.S. § 8-501(A)(7), which is now A.R.S. § 8-501(A)(8) and definition 52 Parent cites A.R.S. § 8-501(A)(8) which is now A.R.S. § 8-501(A)(9).

This rule can also be made more effective by removing references to DES and replacing them with those that refer to the Department. This rule can be made more effective by replacing terms such as "facility" that can be confused with entities the Arizona Department of Health Services (ADHS) licenses.

In order to effectively promote a uniform understanding of terminology used for Child Placing Agency and Child Welfare Agency licensing rules, the Department is proposing to combine all definitions into one Article that applies to both entities in its new rules.

R6-5-7402 Request for Initial Application - New Applicant can be made more effective by replacing procedures with any updated procedures used by the Department of Child Safety's, OLR. The rule can be made more effective by updating it to comply with recent legislation, contained in House Bill 2487. (52nd Legislature, Second General Session)

R6-5-7403 Letter of Intent - New Applicant can be made more effective by replacing outdated terminology and procedures with any updated terms and procedures used by the Department of Child Safety, OLR. . The rule can be made more effective by updating it to comply with recent legislation contained in House Bill 2487. (52nd Legislature, Second General Session)

R6-5-7404 The Licensing Consultation; Time for Completion of Application can be made more effective by removing references to DES and replacing them with those that refer to the Department. This rule should be updated to reflect that OLR completes the health and safety inspections instead of ADHS.

R6-5-7405 Complete Application; Initial License - New Applicant can be made more effective by replacing outdated terminology, timeframes and procedures with any updated terms and procedures used by the Department of Child Safety's, OLR. This rule should be updated to reflect that OLR completes the health and safety inspections instead of ADHS.

R6-5-7406 Site Inspection can be made more effective by reflecting that OLR completes the health and safety inspections instead of ADHS.

R6-5-7407. Licensing Study can be made more effective by addressing requirements for Tribal group homes and for Child Welfare Agencies not contracted with the State. The rule can be made more effective by updating it to comply with recent legislation contained in House Bill 2487. (52nd Legislature, Second General Session)

R6-5-7409. Licenses and Operating Certificates: Form; Term; Nontransferability can be made more effective by replacing outdated procedures with any updated procedures used by the Department of Child Safety, OLR.

R6-5-7410. Licensed Agency: Application for an Operating Certificate for an Additional Satellite Facility can be made more effective by replacing outdated terminology and procedures with any updated terms and procedures used by the Department of Child Safety, OLR. This rule should be updated to reflect that OLR completes the health and safety inspections instead of ADHS.

R6-5-7411. Application for Renewal of License and Operating Certificates can be made more effective reflecting that OLR completes the health and safety inspections instead of ADHS.

R6-5-7412. Renewal of License and Operating Certificates: Site Inspection; Time-frames; Standard for Issuance can be made more effective by reflecting that OLR completes the health and safety inspections instead of ADHS.

R6-5-7413. Notification to Licensing Authority of Changes Affecting License; Staff Changes can be made more effective by updating the name and type of the form used by OLR.

This rule can also be made more effective by updating requirements, such as notifying the licensing authority when a group home closes.

R6-5-7414. Amended License or Operating Certificate can be made more effective by updating requirements related to fingerprinting and criminal background checks to comply with current statute. This rule should be updated to reflect that OLR completes the health and safety inspections instead of ADHS.

R6-5-7415. Alternative Method of Compliance is ineffective in achieving the overall objective of these rules, protecting placed children. For example, over the last twelve months only one applicant and one licensee were approved for an alternative method of compliance. The Department believes that once the rules are rewritten, neither the applicant nor the licensee would require an alternative method of compliance.

The Department proposes that this rule be repealed from Article 74, and not be included in the new draft rules covering Child Welfare Agencies.

R6-5-7416. Monitoring can be made more effective by replacing outdated general language with specific language such as the minimum number of unannounced inspections. Other specific language would include stipulating that the unannounced inspections can be conducted at any time of night or day.

R6-5-7417. Complaints; Investigations can be made more effective by revising citation of A.R.S. § 8-546.01(C) to match current State statute A.R.S. § 8-456(C).

R6-5-7420. Denial, Suspension, and Revocation of a License or Operating Certificate can be made more effective by correcting the citation A.R.S. § 46-141 to read A.R.S. § 41-1758.07.

R6-5-7424. Governing Body can be made more effective by reevaluating restrictions in terms of the type and size of a Child Welfare Agency.

R6-5-7425. Business and Fiscal Management; Annual Audit can be made more effective by reevaluating requirements in terms of the type and size of a Child Welfare Agency.

R6-5-7426. Insurance Coverage can be made more effective by reevaluating requirements in light of the Arizona Department of Administration (ADOA) contract requirements.

R6-5-7427. Confidentiality can be made more effective by ensuring requirements reflect A.R.S. § 8-807.

R6-5-7428. Children's Records: Contents, Maintenance, Destruction can be made more effective by ensuring requirements reflect A.R.S. § 8-807.

R6-5-7431. General Qualifications for Staff should specify that staff members who do not already have valid fingerprint clearance cards should be fingerprinted within 7 working days of

their date of hire, as required by A.R.S. § 46-141. It should also be updated to reflect the current requirements contained in A.R.S. § 41-1758.07. This rule can also be improved by revising qualifications of staff to reflect various levels of care.

R6-5-7433. Orientation and Training for Staff can be made more effective by listing the training requirements for part-time staff, reevaluating restrictions on training delivery models, and specifying the type of training required, but not the specific title of the training. The rule can also be made more effective by reflecting current training timeframes in A.R.S. § 8-509.

R6-5-7434. Notification of Unusual Incidents and Other Occurrences to be more effective, should be rewritten, to better clarify what constitutes an unusual incident, and which unusual incidents must be reported to the Department.

R6-5-7436. Runaways and Missing Children can be made more effective by updating it to conform to Public Law 113-183. Preventing Sex Trafficking and Strengthening Families Act.

R6-5-7437. Staff Coverage; Staff-child Ratios can be made more effective by updating ratios to reflect current best practice. This rule can be made more effective by clarifying what is meant by “coverage.”

R6-5-7438. Admission and Intake; Criteria; Process; Restrictions would be more effective if “vocational training program” were defined in R6-5-7401. The term as its used today has a much broader definition than when the rules were adopted.

R6-5-7440. Orientation Process for a Child In Care could be made more effective by requiring an agency only to repeat the child’s orientation process if a child returns to care in the same facility within a designated time period (e.g. 3 or 6 months).

R6-5-7441. Child’s Service Plan: Preparation; Review; Planning Participants could be made more effective by revising requirements that may result in an agency duplicating the service plan developed by the child's DCS worker.

R6-5-7444. Children’s Clothing and Personal Belongings can be made more effective by revising the requirements to reflect the reasonable and prudent parent standard in Public Law 113-183, Section 111 (Supporting Normalcy for Children in Foster Care).

R6-5-7445. Children’s Money; Restitution can be made more effective by revising the requirements to reflect Public Law 113-183, Section 111 (Supporting Normalcy for Children in Foster Care).

R6-5-7446. Nutrition, Menus, and Food Service can be made more effective by revising the requirements to reflect Public Law 113-183, Section 111 (Supporting Normalcy for Children in Foster Care).

R6-5-7447. Sleeping Arrangements can be made more effective by clarifying the requirements for a sleeping area, such as square footage requirement, requirement to provide a bed and mattress, prohibition against staff sleeping with a child, and a privacy requirement for the child.

R6-5-7448. Visitation, Outings, Mail, and Telephones can be made more effective by revising the requirements to reflect Public Law 113-183. Section 111 (Supporting Normalcy for Children in Foster Care).

R6-5-7450. Recreation, Leisure, Cultural Activities, and Community Interaction can be made more effective by revising the requirements to reflect Public Law 113-183, Section 111 (Supporting Normalcy for Children in Foster Care).

R6-5-7451. Religion, Culture, and Ethnic Heritage can be made more effective by revising the requirements to reflect Public Law 113-183 Section 111 (Supporting Normalcy for Children in Foster Care).

R6-5-7452. Medical and Health Care would be more effective if a thermometer were added to the list of first aid supplies that agencies must maintain.

R6-5-7454. Storage of Medications should be amended by adding a subsection that refers to additional requirements for storage of medication in R21-8-108.

R6-5-7457. Body Searches can be made more understandable by defining internal body cavity search.

R6-5-7459. Building Interior can also be made more effective by updating requirements to reflect current building and zoning codes.

R6-5-7460. Kitchens; Food Preparation; and Dining Areas can be made more effective by removing outdated rule ADHS requirements regarding commercial kitchens, because they have been amended or repealed. The rule can also be made more effective by reevaluating requirements for various sizes and types of residential group care facilities.

R6-5-7461. Sleeping Areas and Furnishings can be made more effective by clarifying requirements for a sleeping area. Section (A)(2)(b)(iii) needs to be amended to clarify how the window measurement should be made.

R6-5-7464. Fire, Emergency, and Fire Prevention can be made more effective by updating requirements to comply with current building code, zoning and fire safety requirements.

R6-5-7465. General Safety can be made more effective by updating requirements to comply with current building and zoning codes.

R6-5-7466. Swimming Areas can be made more effective by revising requirements to reflect R21-8-113, refer to R21-8-113, or be repealed altogether.

R6-5-7467. Access; Transportation; Outings Section (C)(1) provides requirements for agencies in regard to taking children in care on non-routine outings. The rule reads, “For every facility-sponsored outing which is not part of the daily routine, *such as a recreational trip of four hours or more, or an outing where emergency medical services cannot respond within 12 minutes,* a licensee shall maintain a record...” The monitoring of licensed Child Welfare Agencies reveals that many, if not most of the agencies, focus on the two examples provided and use these as their only requirements for what they document in their outing log. The Department plans to revise the rule to remove the examples provided, to clarify that an outing log should document activities that are “not part of the daily routine,” which could be any number of trips rather than just the two examples provided.

R6-5-7469, R6-5-7470 and R6-5-7471 Outdoor Experience Programs can be made more effective by separating and reducing the amount of subject matter in each rule and moving these requirements to a new Article within the new Chapter for these rules.

D. CONSISTENCY

Article 74 is generally consistent with state and Federal law and Department policy, with the following exceptions:

- Article 74 does not reflect that the Department of Child Safety’s OLR, rather than ADHS, performs health and safety inspections.
- R6-5-7401 contains outdated citations of the Arizona Revised Statutes.
- R6-5-7402 do not reflect current requirements in A.R.S. § 41-1002
- R6-5-7417 contains outdated citations of the Arizona Revised Statutes.
- R6-5-7420 and R6-5-7431 do not reflect current fingerprint requirements in A.R.S. § 41-1758.07 or A.R.S. § 46-141.
- R6-5-7420 contains incorrect citations of the Arizona Revised Statutes.
- R6-5-7432 and R6-5-7433 prescribe specific vendors for training rather than establishing general standards for training.
- R6-5-7436 does not reflect new federal requirements for victims of sex trafficking (Public Law 113-183. Preventing Sex Trafficking and Strengthening Families Act).
- R6-5-7454 is inconsistent with R21-8-108.
- R6-5-7460 contains outdated citations of the Arizona Administrative Code.
- R6-5-7467 contains outdated citations of the Arizona Administrative Code.

E. ENFORCEMENT POLICY

The Department enforces all Article 74 rules, as written, to the extent that they do not conflict with current state or federal law.

F. CLEAR, CONCISE, AND UNDERSTANDABLE

These rules can be made more concise by combining, under one Article, the rules that apply to both Child Placing and Child Welfare Agency licensing and operation. For example, the combined Article could include rules for Definitions that apply to both entities and the topics of obtaining and submitting an initial license application, the Department’s licensing time frames, the structure of the Governing Body, description and circumstances warranting an adverse licensing action, and the standards for maintaining the confidentiality of records and information.

These rules could be improved and made more clear by updating citations to reflect current administrative rule, state and federal laws. These rules can also be improved by updating antiquated terms, such as “CPS,” “CPSCR”, and “maltreatment.” The rules can also be written with more accuracy by replacing references to the Department of Economic Security, and the Department of Health Services, where appropriate, with references to the Department of Child Safety.

These rules can be made more understandable by specifying the Department's current procedures, such as issuing initial and renewal licensing applications, explaining the licensing requirements and identifying circumstances calling for an adverse licensing action. The rules can be made more understandable by updating licensing and operating standards to reflect current statute. For example, Confidentiality does not reflect recent changes to A.R.S. § 8-807. Initial licensing requirements do not reflect recent changes to A.R.S. § 41-1002.

G. WRITTEN CRITICISMS

Prior to May 29, 2014, a petition to amend R6-5-7432 and R6-5-7433 was sent on November 13, 2013 from the Health and Safety Institute to the Department of Economic Security. The first rule, R6-5-7432, requires that direct care staff are certified in pediatric cardiopulmonary resuscitation (CPR) and in first aid. The rule is specific and lists the American Red Cross, the American Heart

Association, or the Arizona Chapter of the National Safety Council as the sole providers of this certification. The second rule, R6-5-7433, references R6-5-7432 as the criteria to be met for staff CPR training; and also specifies using the American Red Cross guidelines. The petitioner indicated that this level of specificity excluded his firm from fairly competing in the provision of CPR certification.

The Department of Economic Security received the petition and wrote an initial response to the petitioner on December 6, 2013. A final response was sent to the Health and Safety Institute on January 10, 2014, indicating that DES was interested in amending the R6-5-7432 and R6-5-7433, but denied the specific language of the petitioner. Opening up the specific rules in Article 74, was not possible at that time, due to the Executive Order 2012-03, which placed a moratorium on rulemaking without specific approval by the Office of the Governor. DES wrote to the petitioner, that they would be notified when a Notice of Proposed Rulemaking had been published and then the Health and Safety Institute could participate in the public comment process. (The documents related to this public criticism and the responses from DES are included with the submittal of this report.)

The written criticism from the Health and Safety Institute was reviewed as preparations for this report were initiated. On February 26, 2016 Department's Lead Rules Analyst contacted the petitioner by phone and informed him that DCS had become its own Department. The Lead Rules Analyst explained that the authority and material contained in Article 74, now belonged to DCS. The Lead Rules Analyst also informed the petitioner, that the topics of Article 69 (Child Placing Agencies) and Article 74 (Child Welfare Agencies) had received an exception to Executive Order 2016-03, for the Department to conduct regular rulemaking. The conversation concluded with a commitment from DCS to notify the petitioner once a draft set of rules was ready for public comment. The petitioner also forwarded the Department some draft language to consider when rewriting the rules.

During the Department's eighteen month exempt rulemaking term, (May 29, 2014 – November 28, 2015) the Department drafted new rules to replace Article 74. The Department posted the draft rules the Department's website for more than 30 days. The Department also held two public hearings and a stakeholder meeting to obtain feedback on the proposed rules.

Criticisms and comments covered a number of areas. Copies of the written comments and on-line comments are contained in the enclosed supplement of this report. In addition, a copy of the issue matrix used by the Department to facilitate the meeting with stakeholders on October 21, 2015 is included. That meeting included the draft rules for Child Placing Agencies (currently Title 6, Chapter 5, Article 69). Also included are written comments from the two public hearings held in Tucson and Phoenix.

The public and stakeholders voiced several concerns with the draft rules. The draft definitions were said to be unclear and confusing. The draft rules requiring a governing body and a chief financial officer (CFO) were viewed unfavorably for not considering the various sizes and models of the current Child Welfare Agency businesses. The draft rules defining a residential group care facility as an entity licensed for more than five children, was criticized by smaller businesses for the potential of additional zoning and facility requirements. The draft rules requiring staff be awake and available for twenty-four hours were criticized for being unaffordable and contrary to some Child Welfare Agency care models.

The draft rules were criticized for removing the alternative method of compliance found in R6-5-7415 of the current rules. The draft rules regarding criteria for applying for a satellite facility by having no outstanding issues or investigations at the applicant's existing facility or facilities were considered to be unrealistic. The draft rules regarding the reasonable and prudent parent standard found in Public Law 113-183, Section 111 (Supporting Normalcy for Children in Foster Care), were criticized for not addressing how the standard would apply to various ages of youth and populations. The draft rules regarding required staff training were disapproved for not distinguishing between those needed for different levels of care. A draft rule added requiring communication with the school district regarding the location of the residential group care facility and enrolled youth in their care; was criticized for being out of the scope of the rules chapter. The draft rules regarding provisional license were criticized for not specifying timeframes and conditions for a provisional license.

The Department has considered these criticisms and plans to incorporate some of the suggested changes. For example, the CPR training certification will no longer specify a particular vendor. The governing body requirement is changing dramatically and will no longer require a CFO. As noted above, the alternative method of compliance will be made obsolete with the revised rules.

Additionally, the Department plans to hold a meeting with community stakeholders to review the draft rules prior to publishing a Notice of Proposed Rulemaking. When revising the current rules, the Department will consider alternatives suggested by the stakeholders.

H. ECONOMIC IMPACT COMPARISON

Child Welfare Agencies

After consultation with the Department of Economic Security, Policy and Planning Administration, DCS obtained a copy of an Economic Impact Statement submitted with the DES's 2011 five year review report for Article 74. A copy of the five year review report is included as an attachment of this report.

Because the Article 74 rules are still in effect, the economic impact of administering these rules has not significantly changed. For example, DES OLCR did not charge a licensing fee and the Department of Child Safety's OLR also does not charge a licensing fee for obtaining or maintaining a Child Welfare Agency license. Article 74 requires a child welfare agency to require their staff to obtain a fingerprint clearance card. According to A.R.S. § 46-141(B), the child welfare agency can pass the cost of fingerprinting on to the staff. Alternatively a child welfare agency can include the cost of fingerprinting in its contract reimbursements with the State.

Currently, OLR licenses 98 Child Welfare Agencies licensed by the Department to provide residential group care, 12 that provide shelter care, and six that provide both residential group care and shelter care in the State of Arizona. These agencies play a crucial role in providing for children in out-of-home care.

The agencies that are contracted with the State, received over \$98 million from State contracts in 2015. Based on this level of economic activity, the Department believes the current rules continue to pose the least burden and cost on Arizona's Child Welfare Agencies.

Office of Licensing and Regulation

Prior to May 29, 2014, the Arizona Department of Economic Security administered the Child Welfare Agency licensing rules in Article 74. Although the rules remain in Title 6 of the Arizona Administrative Code, the DES Office of Licensing, Certification, and Regulation (OLCR) no longer administers these rules.

After the legislative removal of the child welfare programs and functions from the Department of Economic Security, the Department of Child Safety established an Office of Licensing and Regulation, (OLR) to administer the rules for Article 74, as well as the rules for licensing Child Placing Agencies, adoption agencies and foster homes.

OLR is organized into three functional units – Licensing, Inspection, and Enforcement. Each functional unit is involved in administering Article 74. These functional units also license, inspect, and enforce the rules for Child Placing Agencies, adoption agencies, and foster homes.

OLR tasks include, but are not limited to, the following:

- Provide information and application packets to parties interested in obtaining a Child Placing Agency, Child Welfare Agency, or Adoption Agency license.
- Review administratively and substantively new and renewal licensing applications and supporting documentation.
- Identify missing documentation and information needed to process and approve a Child Placing, Child Welfare Agency or Adoption Agency license.
- Perform inspections of facilities, and document findings.
- Conduct Life Safety Inspections,
- Review and assess Life Safety Inspection reports.
- Write home studies.
- Make licensing determinations, and issue licenses.
- Provide on-going technical assistance to licensed agencies.
- Conduct annual, scheduled, and unannounced monitoring inspections.
- Receive, evaluate and investigate complaints.
- Issue and track corrective action plans.

- Identify and complete adverse licensing actions, such as suspension, denials and revocations.
- Respond to adverse action appeals.

Table one displays expenditures for Budget Fiscal Year (BFY) 2015 and for BFY 2016, Quarters 1 - 3. OLR expenditures for accomplishing its Licensing, Inspection, and Enforcement functions include:

- Salaries
- Benefits
- Temporary Staff and Contracts
- In State Travel
- Rent/Other Operating Expenditures
- Equipment

OLR - Fiscal Year 2015 & 2016													
FY2016 Budget Fiscal Month													
Expense Category	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	Grand Total
Salaries	114,510	122,137	113,290	178,814	120,624	120,902	132,183	135,057	206,732	-	-	-	1,244,249
Benefits	51,880	53,066	50,978	76,592	52,921	53,518	53,704	56,090	85,467	-	-	-	534,215
Temps & Contracts			4,629	20,432	703	22,078	24,071	16,216	13,313	-	-	-	101,442
In-State Travel	727	2,801	1,083	1,306	503	228		309	907	-	-	-	7,863
Rent/Other Operating	222	1,921	2,976	4,524	*115,270	19,517	47,321	19,419	44,410	-	-	-	255,581
Equipment								1,953	16,436	-	-	-	18,389
Grand Total	167,338	179,926	172,956	281,668	290,022	216,242	257,278	229,044	367,265	-	-	-	2,161,740
<i>* \$115k in November is correcting for previous four months of rent.</i>													
FY 2015 Budget Fiscal Month													
Expense Category	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	Grand Total
Salaries	54,056	81,666	89,619	151,175	96,589	104,713	104,984	108,105	111,298	175,008	104,523	102,679	1,284,415
Benefits	25,501	36,306	38,856	65,086	39,981	43,376	46,290	49,487	51,186	81,302	50,659	49,358	577,387
Temps & Contracts		6,860	11,248	7,481	11,597	9,581	16,212	8,543	19,366	8,906	20,638	52,709	173,140
In-State Travel			475		338	195	289	447	851	405	615	2,409	6,023
Out-of-State Travel				701									701
Other Operating			2,365	2,686	1,804	2,616	4,829	5,501	2,066	4,188	5,762	37,245	69,063
Rent			50	50					50	100			250

Equipment			1,113	119						65	0	6,715	8,012
Grand Total	79,557	124,832	143,726	227,297	150,309	160,481	172,603	172,082	184,817	269,974	182,197	251,115	2,118,991

Table 1. OLR Expenditures for BFY15 and BFY16

The Department believes that the operation of the Office of Licensing and Regulation imposes the least cost and burden to regulated public and to the general public, while safeguarding the interests of the protected public.

I. BUSINESS COMPETITIVENESS ANALYSIS

A business competitive analysis was not received by the Department of Economic Security or the Department from a member of the public during the timeframe or the preparation of this report.

J. COURSE OF ACTION FROM PREVIOUS 5-YEAR REVIEW REPORT

Since the previous five-year report for Article 74, until May 29, 2014, the Department of Economic Security did not conduct rulemaking activities for these rules due to other Department priorities and the Governor’s Executive Orders prohibiting such action without permission.

After May 29, 2014, the Department of Child Safety, began to conduct rulemaking under the exemption provided in its enacting legislation. The Department began to draft new rules to replace Article 74. The previous three five-year review reports for Article 74 were obtained from the Department of Economic Security and the contents of those reports were consulted in the drafting of this report, as well as the Child Welfare Agency rules released in August 2015, to correct previously identified errors and omissions. Examples of these previously identified issues are discussed in Section C of this report.

K. DETERMINATION OF BURDEN AND COSTS

The Department has commissioned a study by an independent consulting group. The study will evaluate the costs of operating a residential group care facility in Arizona and the Department’s contracted reimbursement rates. The Department will consider the results published in this study as the new rules and the corresponding Economic Impact Statement (EIS) are developed.

With the amendments being considered under sections C., D., F., and G. of this report, the Department believes that the new Child Welfare Agency licensing rules will impose the least burden of compliance costs to persons regulated by these rules, while achieving the objectives outlined in section B. of this report for the protected public.

L. CORRESPONDING FEDERAL LAW

The corresponding federal law is, 42 U.S.C. § 675. The rules in Article 74 are not more stringent than federal law.

M. COMPLIANCE WITH A.R.S. § 41-1037

The rules are exempt from A.R.S. § 41-1037. A.R.S. § 41-1037(A)(5) provides an exception to the requirement to use a general permit for a permit, license, or authorization issued pursuant to A.R.S. §§ 8-503 and 8-505.

N. PROPOSED ACTION

The Department requested in December 2015, an exception to Executive Order 2015-01, and received approval from the Governor’s Office on January 20, 2016 to conduct regular rulemaking for the development of Child Placing and Child Welfare Agency licensing rules. These rules will replace Title 6, Chapter 5, Articles 69 and 74 and will be located in Title 21, Chapter 7 of the Arizona Administrative Code.

The Department is currently in the process of updating and redesigning the draft rules based upon the public comments and stakeholder input received in 2015. In May of 2016, the Department of Child Safety’s OLR and rules staff met with a number of additional stakeholders to discuss the current content of Article 74; including AHCCCS, Arizona Department of Juvenile Corrections, Arizona Superior Court, Children’s Action Alliance, Tribal Nations, County and City Planning and Zoning and the Arizona Department of Health Services. Additional meetings will be scheduled with youth in out-of-home care, building and fire inspection professionals and behavioral health professionals.

The DCS OLR and rules staff are working with these and other external partners, residential group care facilities and the public to develop a revised set of draft rules that is satisfactory. The

Department plans to file a Notice of Proposed Rulemaking by late May, 2017, and to submit a Notice of Final Rulemaking to the Council for consideration in September of 2017.

#1



COMPLETE

Collector: Web Link 1 (Web Link)

Started: Tuesday, September 08, 2015 1:38:56 AM

Last Modified: Wednesday, September 09, 2015 8:09:27 AM

Time Spent: Over a day

IP Address: 108.171.135.189

PAGE 1

Q1: Please provide your name (Required)

Levar Patterson

Q2: Please indicate your affiliation: (Required)

On behalf of an Organization/Agency

Q3: If you selected Organization/Agency or Other, please specify below:

Building Dreams, LLC

Q4: What do you like/dislike about the draft Chapter 7 Article 3 - Residential Group Care Facilities and Outdoor Experience Programs Rules?

I like that there is a clear attempt to improve the level of operational standards across all GH agencies both large and small.

(G) - Governing Body - Is this proposed requirement for each agency to have a formal Board or governing body now? There should not be an attempt to overly burden smaller agencies. This should "recommended" for smaller agency under X youth and required before an agency reaches serving a population of X amount of youth.

(K) - Supervision by Department - The Department through OLR shall provide training, consultation, and technical assistance to a Child Welfare Agency - This is a great idea but what is the scope and nature of such training and consultation? Should we expect that an agency can send it's staff to on-going training opportunities by the department which can be used towards 24hrs of continuing education credits required annually for direct care staff?

R21-7-319 Insurance Coverage

(B) Commercial General Liability - The proposed new insurance coverage is now aligned with the expectations of contracts with the state. Are there many providers out there with a license and not a contract? If so, what does this mean for those providers. Are there known issue with lack of coverage prior to this recommended change? What's the reason that licensing is increasing it's coverage requirements. Again, would this be an unfair burden on small operators or those without a contract?

R21-7-323 General Qualifications for Staff

(K) - The licensee shall ensure that at least one paid staff who is trained in and authorized to apply the reasonable and prudent parenting standards for each child in care is in a facility at all times. This may have been apart of article 74 but I don't know how to apply it and prove it. This means that all direct-care staff must have documented "parenting training"? In a web search I found information from California Berkeley on the subject matter (<http://calswec.berkeley.edu/training-resource-reasonable-prudent-parent-standard>). Is there something similar for Arizona?

R21-7-324 Qualifications for Specific Positions; Exclusions

I'm a huge advocate for small agency's and in my discussions with therapist, counselors, CM's, etc. they also are largely in favor of smaller and more intimate setting which resemble the function of a typical family home. This is your typical mom&pop style agency. In addition they have less stimuli in the environment and allow for adequate space and mobility, which children in care tend to need. In what ways do requiring all agency's (without regard to size) to have a CEO, CFO, and Director improve the quality of care or safety of the children? Also, does R21-7-323 (D) General Qualifications for Staff - Multiple Functions, apply concerning these roles. Again, would this be an unfair burden on small operators to payroll a CFO? I presume the recommendations are targeted to areas where the Department has seen the most issues. Can the Department address such concerns without the burden of a CFO? I would hope so.

R21-7-352 Kitchens; Food Preparation; and Dining Areas

(E) 5. - It appears that all staff must have a food handlers card with this proposal? Again, this is a good idea but are there larger implications? It can be done online (<http://www.statefoodsafety.com/food-handler/arizona/maricopa-county>) now and only cost \$8 bucks, but it will be yet another certification for an agency to track and maintain for it's employee's and slow processing and orienting new employees. Obtain within 14 days of employment would seem more reasonable? Again, what issues have been seen in this area that the agency believes this requirement will address?

Q5: What would you add to the draft Residential Group Care Facilities and Outdoor Experience Programs Rules?

I would like to see an explicit outline of the process the Department will use to allow current providers to meet the new or revised rules.

I would like to see more rules geared towards transparency from the Department, such as the Department will make available on a monthly/quarterly basis the total number of inspections, and violations mapped to rules. This type of knowledge sharing could do more than any rules at improving the percentage of compliance by agencies.

Q6: What would you remove from the draft Residential Group Care Facilities and Outdoor Experience Programs Rules?

In general, the proposed rule changes are good improvements, but the Department should take careful consideration in not to use verbiage or structure that is unduly burdensome, materially un-established and which appears to be anti-small agencies.

I consider the community of GH agency operators to be hero's just like Firemen and Police Officers. The majority are passionate about youth and motivated by their vision of caring for youth. Strengthening the partnership between the Department and Agency's should be the focus of rule changes outside the quality of care and safety of children in our care. A stronger alliance will help us all better serve Arizona's youth in foster care.

#2



COMPLETE

Collector: Web Link 1 (Web Link)
Started: Friday, September 11, 2015 3:57:57 PM
Last Modified: Friday, September 11, 2015 4:13:54 PM
Time Spent: 00:15:56
IP Address: 98.172.64.77

PAGE 1

Q1: Please provide your name (Required)

Katie

Q2: Please indicate your affiliation: (Required)

On behalf of an Organization/Agency

Q3: If you selected Organization/Agency or Other, please specify below:

Respondent skipped this question

Q4: What do you like/dislike about the draft Chapter 7 Article 3 - Residential Group Care Facilities and Outdoor Experience Programs Rules?

I do not like that they aren't congruent to the State Contract.
I don't like that there is a timeline that licensing has to complete annual shelter/group home renewals and they don't abide by their own timeline.
If the new licensing rules go through, agencies are going to have to update many of their current forms in place. For smaller businesses, the draft adds too many different layers (i.e. CEO, CFO, Director, etc.).
Will there be a training for 'Reasonable and Prudent Parenting Styles'?
I like that the age of a top bunk has lowered to age 6 and not age 8.

Q5: What would you add to the draft Residential Group Care Facilities and Outdoor Experience Programs Rules?

I would compare the contract to the licensing rules to make them similar.

Q6: What would you remove from the draft Residential Group Care Facilities and Outdoor Experience Programs Rules?

Respondent skipped this question

#3



COMPLETE

Collector: Web Link 1 (Web Link)
Started: Tuesday, September 15, 2015 8:34:14 AM
Last Modified: Tuesday, September 15, 2015 8:49:17 AM
Time Spent: 00:15:02
IP Address: 71.223.109.247

PAGE 1

Q1: Please provide your name (Required)

Donald Savino

Q2: Please indicate your affiliation: (Required)

On behalf of an Organization/Agency

Q3: If you selected Organization/Agency or Other, please specify below:

ACCCI

Q4: What do you like/dislike about the draft Chapter 7 Article 3 - Residential Group Care Facilities and Outdoor Experience Programs Rules?

As ACCCI is primarily concerned with Children with Chronic Illness, these comments relate to the approximately 3% of removals that are medically fragile or complex.

There is nothing in this Chapter regarding DES/DDD population. Licensing of homes in this Chapter/Article does not address the needs for the very developmentally or medically complex who are often placed in DES/DDD licensed homes. There is no addressing coordination with DES/DDD for DDD for placements in DDD foster and group homes.

Q5: What would you add to the draft Residential Group Care Facilities and Outdoor Experience Programs Rules?

DCS should have access to the DDD FOCUS system to immediately check to see if a child is in the DD system (if at all suspected). For medically complex/fragile placements, there needs to be a protocol for placement in DDD homes, especially medical group homes.

Q6: What would you remove from the draft Residential Group Care Facilities and Outdoor Experience Programs Rules?

Respondent skipped this question

#4



COMPLETE

Collector: Web Link 1 (Web Link)
Started: Wednesday, September 16, 2015 4:16:32 PM
Last Modified: Wednesday, September 16, 2015 4:37:26 PM
Time Spent: 00:20:53
IP Address: 72.196.47.18

PAGE 1

Q1: Please provide your name (Required)

Greg Ayers

Q2: Please indicate your affiliation: (Required)

On behalf of an Organization/Agency

Q3: If you selected Organization/Agency or Other, please specify below:

GAP Ministries

Q4: What do you like/dislike about the draft Chapter 7 Article 3 - Residential Group Care Facilities and Outdoor Experience Programs Rules?

Respondent skipped this question

Q5: What would you add to the draft Residential Group Care Facilities and Outdoor Experience Programs Rules?

Respondent skipped this question

Q6: What would you remove from the draft Residential Group Care Facilities and Outdoor Experience Programs Rules?

There are two specific areas that will effect us greatly. First, the requirement to have awake nighttime staff in a family model is problematic from both a financial hardship as well as an intrusion on the family model that this requirement makes. Financially this would cost us almost \$500,000 annually in additional salaries to comply. As one of the largest and lowest paid providers of group home services in the state of Arizona, we would be unable to financially continue providing this service strictly from the financial consequence of this policy. Having a "staff" member roaming the house at night would make any family couple uncomfortable. It would severely impact our family model, maintaining couples, which has made us different and sets us apart from all other congregant care providers.

Second, you are asking for us to re-write our bylaws and change the function and structure of our board that has operated successfully for more than 15 years. I am not sure the department has the jurisdiction to require change in an exiting non-profit structure which already complies with Arizona State Laws. These new requirements around the boards terms and function crosses lines that DCS does not need to cross to ensure the saftey and quality of care to children in their custody.

Thank you for your consideration and response to these two issues.

#5



COMPLETE

Collector: Web Link 1 (Web Link)
Started: Thursday, September 17, 2015 7:47:20 PM
Last Modified: Thursday, September 17, 2015 8:13:17 PM
Time Spent: 00:25:57
IP Address: 68.3.151.60

PAGE 1

Q1: Please provide your name (Required)

Jeff Presutti

Q2: Please indicate your affiliation: (Required)

On behalf of an Organization/Agency

Q3: If you selected Organization/Agency or Other, please specify below:

Light House Group Home LLC.

Q4: What do you like/dislike about the draft Chapter 7 Article 3 - Residential Group Care Facilities and Outdoor Experience Programs Rules?

Everything over all looked pretty good.

The only thing that I thought was a bit difficult for some agencies is the CFO part. the average salaries of a CFO in the U.S. is between 67,000 and 249,000. so lets average the salary at 150,000, that's 12,500 a month for smaller agencies that is next to imposable for them. So unless you are going to up the daily rate to what some of the larger agencies make (135-141) a day. Just seems like an expense that smaller agencies, that are not rapidly growing will not benefit from. Will hurt more than help. Bottom line life is getting a lot more expensive and we need are money to be spent in other areas of the agencies that will benefit the children.

Q5: What would you add to the draft Residential Group Care Facilities and Outdoor Experience Programs Rules?

Respondent skipped this question

Q6: What would you remove from the draft Residential Group Care Facilities and Outdoor Experience Programs Rules?

(CFO) no need for it agencies have not had them for 30+ yr. and have been getting along fine.

#6



COMPLETE

Collector: Web Link 1 (Web Link)
Started: Tuesday, September 22, 2015 4:42:01 PM
Last Modified: Tuesday, September 22, 2015 4:45:59 PM
Time Spent: 00:03:58
IP Address: 72.196.47.18

PAGE 1

Q1: Please provide your name (Required)

Pam Ayers

Q2: Please indicate your affiliation: (Required)

On behalf of an Organization/Agency

Q3: If you selected Organization/Agency or Other, please specify below:

GAP Ministries

Q4: What do you like/dislike about the draft Chapter 7 Article 3 - Residential Group Care Facilities and Outdoor Experience Programs Rules?

We need rules and regulations, it just seems like a lot of rules that have been put in place because agencies are not doing a quality job. Is this the best approach?

Q5: What would you add to the draft Residential Group Care Facilities and Outdoor Experience Programs Rules?

The rules overall do not support Family Modeled group homes. GAP Ministries feel this is a preferred method of Group Home Care than a staff model, but the overall draft makes the FAMILY model not practical or financially possible.

Q6: What would you remove from the draft Residential Group Care Facilities and Outdoor Experience Programs Rules?

Response to Title 21, Chapter 7, Article 3

R21-7-301

G: Governing Body

3: Arizona Resident / Not all our board is Arizona Residents. We allow those from outside the state to sit on our board. Would require By-Law change.

5: 1/3 of your board needs to change annually (this means 3 year term limits)/ this would require By-law change, longevity and continuity is important to the function of our board and this would hinder that possibility.

6: Board Membership: Currently our founders serve both on the board and as employees. As founders they are not willing to give up their board position and their function, as a staff member is vital to the growth and strength of the agency. Founders should have an exception to this requirement.

R21-7-329

G: minimum staff to child ratio

C. minimum staff to child ratio

1,b 2,b 3,b 4,b 5 6,b: awake staff / Awake staff would significantly hinder our "family model". I believe our model has demonstrated its value and is a preferred model by DCS. Having someone roaming the house is obtrusive to the family and would cost our agency almost a half a million dollars. With current pay structure we would have to close our doors.

R21-7-339

C,4. b. ii Guard rails / We understand the safety of children is of utmost importance however, with a standard mattress every bunk bed would have to be customized to meet this standard. Only an uncomfortable thin foam mattress would allow us to meet this requirement. With the size of most of the children sleeping on the top bunk a foam mattress is not an appropriate mattress to sleep on.

R21-7-350 Building, grounds

B. Exits

1. ...at least exterior means of egress on each floor.

2.Exits above ground shall have an outside fire escape or fire proof stairwell.../This is not a requirement of our local fire inspector and to put an exterior second floor exits on everyone of our houses would be not be possible. We have traditional designed single-family residences that could not accommodate this requirement.

R21-7-355 Staff Quarters

B. ...provide staff with living and sleeping space separate from a child's living area...

All of our homes are traditional single-family dwellings. They have not been designed or can they accommodate this regulation. GAP Ministries is a family model which dictates we have live in staff in our homes. Providing a separate "living area" is not feasible. A master bedroom gives our House Parents the separate sleeping area but is not a "living area". Could you define "living area"?

#7



COMPLETE

Collector: Web Link 1 (Web Link)
Started: Monday, September 21, 2015 1:30:28 PM
Last Modified: Tuesday, September 22, 2015 5:05:22 PM
Time Spent: Over a day
IP Address: 184.101.76.31

PAGE 1

Q1: Please provide your name (Required)	Martha Hrisoulas
Q2: Please indicate your affiliation: (Required)	On behalf of an Organization/Agency
Q3: If you selected Organization/Agency or Other, please specify below:	Therapeutic Residences for Youth, Inc.

Q4: What do you like/dislike about the draft Chapter 7 Article 3 - Residential Group Care Facilities and Outdoor Experience Programs Rules?

1. R-21-7-310 - Since we already submit a 1011 form when a staff begins and ends employment, this is redundant, and anything that requires more paperwork takes more time away from the children in a smaller facility.

2. R-21-7-316 - G - this needs to be rewritten. It appears to be something thrown in to be politically correct by someone now knowing the population and the consequences of how it is written. According to this, the child can ask anyone of either gender to assist with personal care. So a teen girl with hygiene issues can ask the male staff she finds attractive to help her with her period??? No liability there. And a male teen needing to learn butt wiping 101 (which we have had to do) or how to shower private parts, can ask for a female on staff??? No liability there. And it is difficult to determine a child's gender personal gender preference since in the sexual development of a child, the child can go through many phases before finally determining their direction. You seem to believe that it is determined pre-pubescently. Some are, most are not. The way this is written it applies to all children, not those with gender identity confusion, opening it up to major liabilities to staff and the agencies and the State.

3. R21-7-323 - I. In most of the hands on agencies who do training for CPR and First aid, there is a two year valid card. Why then does a new employee need one within 3 months when everyone else waits for the renewal date to get the class. This is an added expense for the employee or the agency, and makes no sense since it is not consistent across the board. Valid is valid. It is not like a physical which can change easily. It is training. A diploma is still valid long after it was issued...

R21-7-325 C - I like that the format is more flexible. You can only train the same people on the exact same topics so many times before they stop showing up, or sleep, or come late, etc. This gives more flexibility to add topics that are more relevant to the population while maintaining review on the most important areas.

R21-7-328 - Runaways. Have a question - the rules do not address a runaway that returns several days later. Contracts states that the day the runaway leaves is the day they stop paying. What is the reason we would take a child back or even wait to see if a child returns in a couple of days if we get no reimbursement? Having done this for 29 years, many kids return after a short time, but this just promotes bouncing of kids instead of teaching them to come back, deal with it, and move on responsibly. There used to be a time frame in which the bed would be held. Can that get reinstated? Seems better for the child as stability is half the battle.

R21-7-350 B. Question - rule is not clear. All doors used for exits must have access from the inside to unlock them. What about doors you do not want to use for exits, doors in areas that are restricted to general use, doors in which they are not taught to leave through. Can those doors be locked from both sides to prevent unwanted entry and exits as long as there are enough exit doors available?

The governing body - if I read this correctly - this states that an owner of a company cannot be on the Board? I have never heard of such a thing. Every corporate Board allows the owners a voice on the Board. It is their investment, their liability, their work that put the corporation where it is, and they should have at least a voice. Not the sole voice, but a voice. If there is a corrupt governing board, and the owners have no input, where is the liability? Board members don't have it, the owners do. This is not right. Luckily, I am nonprofit, and no one owns the corporation, and the Board is advisory but not liable. Seems like shakey legal ground to me.

Q5: What would you add to the draft Residential Group Care Facilities and Outdoor Experience Programs Rules?

The medical first aid kit should have some sort of antiseptic spray, cream or ointment. Triangular bandages are obsolete - should be slings. Also should have a thermometer to assess fever, and some over the counter age appropriate fever reduces - e.g. tylenol, tylenol jr., etc.

Q6: What would you remove from the draft Residential Group Care Facilities and Outdoor Experience Programs Rules?

Personally, I would remove all additional paperwork that is redundant and/or not beneficial to the running of the program. For example, giving a child something in writing that tells him how to get help is nothing useful. I already give out several policies in writing to kids upon orientation, including rights, visitation and contact, etc. and all end up in the waste basket, many before they leave the office. The rules have to apply to the population and bombarding a child with paperwork he has no intention of reading is not. Our job is to make a child feel like he is at home, not in an institution. That is how they assimilate into their neighborhoods and schools with less trauma. Also, I would like to see removed all licensee requirements that are actually the responsibility of the DCS case manager to supply. We can ask, but if we can't get, what do we do with a child standing there waiting for emergency placement? Expect to receive the info later from the case manager? Really? In what universe does that happen? I like having that info, but it is not the child's fault if the case manager does not have it, and the child should not be denied placement because of that. Likewise, it is not the licensee's responsibility to get family addresses, etc. if the case manager does not return phone calls or emails. When are they taught that all kids need to come with that info? The more the State tries to micro manage agencies, the worse the morale, the fewer professional providers remain. This needs to be conducive to running something professionally, in the best interest of the child, not the State paperwork regs, and there are so many accommodation needs to what is provided that they cannot be covered in the regs, therefore look unfinished upon checking. I see no reason to hand something out to a child that can't read, or struggles with it, and has no intention of reading it. I post the important stuff on the bulletin board, and it still rarely gets read. Also - confirming refill prescriptions that come in from a doctor. In many cases we take them to the same doctor. I understand medical prescriptions, such as asthma inhalers, but they see our doctors for those anyway. But what about psych meds in which we take them back to the same psychiatrist and they are not easy to reach. Why should they need to be checked? A waste of everyone's time and provides no safety benefit to the child. And sometimes the prescribing doctor only works for that particular agency, so the refill is to tie them over until a new intake can be done with a new psychiatrist. So what happens when that doctor does not call back?? Do you not refill the script? That is medical neglect. Some rules make no sense.

#8



COMPLETE

Collector: Web Link 1 (Web Link)
Started: Tuesday, September 22, 2015 5:12:56 PM
Last Modified: Tuesday, September 22, 2015 5:21:01 PM
Time Spent: 00:08:05
IP Address: 71.92.177.66

PAGE 1

Q1: Please provide your name (Required)

Marie Culpepper

Q2: Please indicate your affiliation: (Required)

On behalf of an Organization/Agency

Q3: If you selected Organization/Agency or Other, please specify below:

Rite of Passage

Q4: What do you like/dislike about the draft Chapter 7 Article 3 - Residential Group Care Facilities and Outdoor Experience Programs Rules?

Please provide clarification and answers to the following regs:

R21-7-325. Orientation and Training for Staff

(4). Training staff in trauma-informed care of children;

QUESTION: Does DCS have a standardized training all providers will be required to utilize, and if so will DCS providing training, or will the Trauma-Informed curriculum be up to the provider?

R21-7-339 Sleeping Arrangements

(C)(4)(b) states, " Allow a child in care not identified by subsection (E)(1)(c) to sleep in a bunk bed or similar style bed in which the top of the mattress is elevated four or more feet above the floor."

QUESTION: Subsection (E)(1)(c) does not exist in the new rule. Please clarify.

R21-7-353 Sleeping Areas and Furnishings

(3)(d) states, "Has safety railings if developmentally appropriate for the child using an upper bed of a bunk bed."

QUESTION: What constitutes developmentally appropriate (i.e. age, etc.)? Please clarify.

E. The current regulation includes R6-5-7415 - Alternative Method of Compliance

QUESTION: Will this rule be reinstated in Title 21? If not, will either alternative methods of compliance (AMOCs) be allowed or will existing AMOCs be grandfathered in?

Q5: What would you add to the draft Residential Group Care Facilities and Outdoor Experience Programs Rules?

Respondent skipped this question

Q6: What would you remove from the draft Residential Group Care Facilities and Outdoor Experience Programs Rules?

Respondent skipped this question

#9



COMPLETE

Collector: Web Link 1 (Web Link)
Started: Tuesday, September 22, 2015 4:52:12 PM
Last Modified: Tuesday, September 22, 2015 5:21:20 PM
Time Spent: 00:29:07
IP Address: 70.166.116.234

PAGE 1

Q1: Please provide your name (Required)

Paula Tellez

Q2: Please indicate your affiliation: (Required)

On behalf of an Organization/Agency

Q3: If you selected Organization/Agency or Other, please specify below:

Old Pueblo Children's Services, Inc.

Q4: What do you like/dislike about the draft Chapter 7 Article 3 - Residential Group Care Facilities and Outdoor Experience Programs Rules?

I LIKE/AGREE (R21-7-324) the "Exclusions" Critical to ensure continued operation of our agency for those trained and skilled various positions and may not meet the educational required, but are highly skilled and employed prior to 9/29/2000. I also LIKE/AGREE the holding more than 1 position in a small agency where its manageable and critical in order to continue to operate unless multi-tasking was part of the structure.

DISLIKE/DISAGREE (R21-7-106, R21-7-102) the Governing Body Exclusion from the Board Membership. Our board is made up of the Founder of our agency, CEO as well as community members. As a small agency we find it imperative that there is a equal representation of both active paid administrators and local non-paid members to be involved and share on-going information about the system as a whole. Any exclusion will be a detriment to our agency. All board members are long term members committed to health and welfare of the children placed in our care. We have a 22+ year record of successfully governing our agency under our present board structure. Any changes will cause undue hardship to our operation and the children we serve.

Q5: What would you add to the draft Residential Group Care Facilities and Outdoor Experience Programs Rules?

(R21-7-340) Visitation, outings, mail and telephones A licensee may stop a visitation between a parent and child if the parent doesn't show up for three consecutive visits if approved by the individual child safety worker. The emotional abuse occurring on a number of cases where, parents continue to be no shows for visits has become and epidemic.

Q6: What would you remove from the draft Residential Group Care Facilities and Outdoor Experience Programs Rules?

Remove the Governing Board Exclusion from Board membership as it relates to paid employees in the position of Founder and CEO being an active member on our Board being composed of both paid and un-paid community members as we are presently structured and was approved under Article 74.

#10



COMPLETE

Collector: Web Link 1 (Web Link)

Started: Tuesday, September 22, 2015 10:45:37 PM

Last Modified: Tuesday, September 22, 2015 10:46:01 PM

Time Spent: 00:00:23

IP Address: 71.211.120.239

PAGE 1

Q1: Please provide your name (Required)

Tiffany Padilla

Q2: Please indicate your affiliation: (Required)

On behalf of an Organization/Agency

Q3: If you selected Organization/Agency or Other, please specify below:

Sunaire House

Q4: What do you like/dislike about the draft Chapter 7 Article 3 - Residential Group Care Facilities and Outdoor Experience Programs Rules?

R21-7-338. Nutrition, Menus, and Food Service - Not reasonable: A registered nutritionist or dietitian shall either prepare or approve the licensee's menus. This is too expensive, too restrictive, does not allow clients to suggest meals, difficult to teach clients to cook from different recipes, does not promote a homelike environment, does not allow for taking clients out in public to eat..

Q5: What would you add to the draft Residential Group Care Facilities and Outdoor Experience Programs Rules?

Respondent skipped this question

Q6: What would you remove from the draft Residential Group Care Facilities and Outdoor Experience Programs Rules?

Respondent skipped this question

#11



COMPLETE

Collector: Web Link 1 (Web Link)
Started: Tuesday, September 22, 2015 10:47:44 PM
Last Modified: Tuesday, September 22, 2015 10:49:17 PM
Time Spent: 00:01:32
IP Address: 71.211.120.239

PAGE 1

Q1: Please provide your name (Required)

Tiffany Padilla

Q2: Please indicate your affiliation: (Required)

On behalf of an Organization/Agency

Q3: If you selected Organization/Agency or Other, please specify below:

Sunaire House

Q4: What do you like/dislike about the draft Chapter 7 Article 3 - Residential Group Care Facilities and Outdoor Experience Programs Rules?

R21-7-360. Special Provisions for Shelter Care Facilities - Did not see specific language regarding the regulations when a client on shelter status being place in a group home (not a shelter).

Q5: What would you add to the draft Residential Group Care Facilities and Outdoor Experience Programs Rules?

Respondent skipped this question

Q6: What would you remove from the draft Residential Group Care Facilities and Outdoor Experience Programs Rules?

Respondent skipped this question

#12



COMPLETE

Collector: Web Link 1 (Web Link)
Started: Tuesday, September 22, 2015 8:19:20 AM
Last Modified: Wednesday, September 23, 2015 12:05:43 AM
Time Spent: 15:46:23
IP Address: 184.101.0.226

PAGE 1

Q1: Please provide your name (Required)

Margaret Jordan

Q2: Please indicate your affiliation: (Required)

On behalf of an Organization/Agency

Q3: If you selected Organization/Agency or Other, please specify below:

DREAM Group Homes, Inc.

Q4: What do you like/dislike about the draft Chapter 7 Article 3 - Residential Group Care Facilities and Outdoor Experience Programs Rules?

The changes that I dislike about this draft are as follows:

1. The requirement of a minimum of 6 beds/children to be considered a group home facility. DREAM Group Homes is located in the city of Maricopa, AZ. Currently, their zoning code, Chapter 16, Section 410.24, Subsection B. Standards: Residential and Group Care Homes shall be located, developed, and operated in compliance with the following standards:
B-2: Occupancy: The number of residents, excluding staff, shall not exceed 5.
When becoming licensed for more than 6, a current company located in rural areas with zoning restrictions would have to endure a costly location change to a city that will allow for more than a minimum of 5, and/or submit for approval, a request for accommodation to increase the minimum number of beds. This change would then submit the existing company to costly structural repairs to be in compliance with installed home sprinklers, etc.
2. The requirement of having a CFO within the company. I have the necessary requirements to be both the CEO and CFO, but for new companies, the use of a bookkeeper and/or CPA firm should suffice until the agency has a minimum number of beds/homes to support the expense of a CFO.
3. All agencies should not be required to have a board. Or if there is a mandatory board, for transparency through the agency, board members should be chosen from every level of employee, plus additional outside members.
4. The article does not address live-in staff as related to 'awake' status when children are sleeping.

Q5: What would you add to the draft Residential Group Care Facilities and Outdoor Experience Programs Rules?

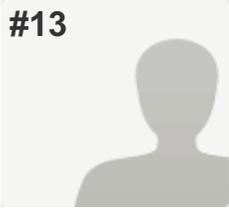
n/a

Q6: What would you remove from the draft Residential Group Care Facilities and Outdoor Experience Programs Rules?

I would keep the minimum number of beds/children to be served at 5 children. If this cannot be done, the current companies who have zoning restrictions as the city of Maricopa does, should be grandfathered in, for the life of their company. This grandfather status for a 5 bed minimum should also extend to additional satellite locations, should the company wish to expand.

I would also remove the requirement for a CFO until a minimum number of beds/satellite locations within an agency have been met.

#13



COMPLETE

Collector: Web Link 1 (Web Link)
Started: Wednesday, September 23, 2015 3:25:28 AM
Last Modified: Wednesday, September 23, 2015 4:20:24 AM
Time Spent: 00:54:56
IP Address: 70.190.253.122

PAGE 1

Q1: Please provide your name (Required)

Donald McGrath

Q2: Please indicate your affiliation: (Required)

On behalf of an Organization/Agency

Q3: If you selected Organization/Agency or Other, please specify below:

Achieve Youth Services

Q4: What do you like/dislike about the draft Chapter 7 Article 3 - Residential Group Care Facilities and Outdoor Experience Programs Rules?

I like the clarity provided in several parts of the text where it can seem at times to be lacking in the current code. I dislike some components of the code where it feels as though there is regulatory overreach that is neither in the best interests of residential group care facilities nor the children they serve. Please see below for specific comments. Thank you so much for your time as well as your role in helping Arizona's children.

Q5: What would you add to the draft Residential Group Care Facilities and Outdoor Experience Programs Rules?

R21-7-307 (B,1a): This section dealing with criteria to add an additional facility should be amended to allow any organization that was licensed within a year prior to the effective date of this code to not be bound by this new one year restriction on expansion. These were not the terms these organizations entered into in good faith with the state as they negotiated their initial license and contracts.

R21-7-314 (A, 4. 5. 6. and 7.): Provisions should be added to this section that allow the licensee to immediately dismiss any member of the staff or agency once it is known that this staff or agency member has violated any provision of this section. This should include the option to dissolve an ownership share of any offending member. If the agency refuses or is unable to dismiss the staff or agency member, then the denial, suspension, or revocation criteria should apply in that instance.

R21-7-314 (C, 1. 2. and 3.). The word "knowingly" should be added to the beginning of each subsection 1, 2, and 3 so that it is clear that the organization must have knowledge of a conviction of a staff member prior to a license denial, suspension, or revocation.

R21-7-329 Which deals with staff coverage and child staff ratios should be amended to account for homes that serve a broader age range. DCS has recently been soliciting licensees who currently serve ages 12-17 to accept younger children. This text should clarify how many children the licensees may have in their care between the ages of 6-11 before the more stringent staffing requirement come kick in. I believe it may be beneficial for DCS to consider allowing licencees some percentage of younger children (say 25-30%) to reside in the home before the more stringent staffing ratios apply in order to help meet potential demands for homes for younger children.

R21-7-330 (E,8) Deals with prescription medication refills. This section should be amended to have a provision allowing prescriptions to be refilled if documentation was provided to licensee by placing agency noting that a licensed medical professional has already determined the child's need for the medication and has pre-authorized refills as a part of that need.

Q6: What would you remove from the draft Residential Group Care Facilities and Outdoor Experience Programs Rules?

R21-7-301 (G): I would remove the section of text that deals with board membership and composition altogether. As discussed at length during the public hearing, there are simply too many problems with this section to move forward with it. Moreover, this code as written makes no sense for any for-profit organizations to fit under. For profit entities are autonomous entities that are free to determine their own organizational structures. This recognition of autonomy is written into the current code under R6-5-7424 (A,2), and that code should be transferred over and reflected in this revision should any of the other text stand.

Section R21-7-307 (B, 1c): This section should be removed from the text. It is unfair to punish an organization based on claims that have not been substantiated. Given the potential time frame on closing out an investigation, you could theoretically have an organization in Limbo/purgatory for years on end, with no ability to expand and no proven instances of wrongdoing. That is not reasonable.

#14



COMPLETE

Collector: Web Link 1 (Web Link)
Started: Wednesday, September 23, 2015 6:45:32 AM
Last Modified: Wednesday, September 23, 2015 6:57:33 AM
Time Spent: 00:12:00
IP Address: 206.169.116.149

PAGE 1

Q1: Please provide your name (Required)

Jane D'Amore

Q2: Please indicate your affiliation: (Required)

On behalf of an Organization/Agency

Q3: If you selected Organization/Agency or Other, please specify below:

D'Amore Group Home

Q4: What do you like/dislike about the draft Chapter 7 Article 3 - Residential Group Care Facilities and Outdoor Experience Programs Rules?

I do not like the addition of more detailed oversight without the ability to be flexible or have room to consider situations. Every county and every program serves different levels, abilities, cultures and needs. There will ultimately be situations where different situations and circumstances should be considered, but removing the option to be flexible by through stringent and specific wording will cause service to become controlled by words, rather than people.

Q5: What would you add to the draft Residential Group Care Facilities and Outdoor Experience Programs Rules?

I would like to add the opportunity to be flexible, as is in the current standards with the exception request. We should have the ability to have a working relationship with OLR, and part of doing that is being able to have professional conversations regarding our needs and also consider proposing ideas that may be innovative and extraordinary. Using an option to propose those ideas and needs through writing an exception that can be approved will allow us the flexibility to be confident that we are being supported through the process of serving children.

Q6: What would you remove from the draft Residential Group Care Facilities and Outdoor Experience Programs Rules?

I have drafted a long response here and will cut and paste the info into this section.

- Governing Board requirements and application of those requirements are going to be difficult to apply to a small single owner organization. In the prior standards, it clearly defines that sole proprietorships, usually small family owned businesses like our organization, would not be subjected to the requirements of a governing board. The current regulation R6-5-7424 B. 5. states under Governing Board, "unless the licensee is a sole proprietorship, meet at least 4 times each year and maintain records of attendance and minutes of the meetings". Under the draft proposal, the requirements do not mention sole proprietorship in this section and appear to require all organizations, regardless of size, to have a governing board. This does not make sense if an organization has only 7 or 8 employees and is a sole proprietorship or single member LLC. The requirement also lists at least 5 members to the board, without adding in the CEO of the company. Under R21-7-106 2. draft proposal, it states "for non-incorporated agencies the governing board shall consist of a minimum of 5 individuals responsible for the organization, operation, and administration of the agency". For some companies, this could result in as many board members as there are employees. This seems unreasonable and a waste of valuable time and resources. I request that sole proprietorships and single member LLC's that operate 2 or less homes are exempt from the requirement of the governing board.

- The inclusion of a CFO position will create an added financial burden and it is not clear why this position should be necessary now when it has not been required in the past. Currently, the requirement for an organization to perform a yearly audit is expensive and provides an in-depth review of a company's financial well-being. In addition, the submission of financial statements allows for detailed information pertaining to daily expenses and operations of the business. What is the purpose of a CFO position, when all the other documentation is already required? Asking a small sole proprietorship or small LLC with only a small number of homes to include a CFO in their financial structure is

small sole proprietorship or small LLC with only a small number of homes to include a CFO in their financial structure is a huge additional expense. One of the requirements of the CFO is to make "analysis of budgets, financial trends and forecasts". In most cases, especially with smaller organizations that use one contract provider, there is no fluctuation of finances to analyze. Contracted amounts don't change, and in most cases don't change for the term of the RFP. Staffing costs remain consistent related to the licensing capacity and operation costs remain stable related to the number of children placed in the home. It is simple to evaluate smaller organizations system of accounting. If the CFO position is to be implemented it should be determined by organizations size, funding sources and revenues.

- An area that has not been clearly defined in the past and is not in compliance with federal regulations is the request for audit. In the DCS Special Terms and Conditions of the current RFP it states an audit should be conducted yearly for organizations, "Audit. In addition to the terms and conditions in section 3.3 of the Uniform Terms and Conditions, the following shall apply:

- o 3.1 In compliance with the Federal Single Audit Act (31 U.S.C. Sections 7501-7507 as may be amended), Contractors designated as sub recipients, as described in the Office of Management and Budget (OMB) Circular A-133, expending Federal funds from all sources totaling \$500,000 or more, shall have a yearly audit conducted in accordance with the audit and reporting standards as prescribed in OMB Circular A-133 (A-133) as may be amended."

For sole proprietorships with one facility the organization may not meet the required \$500,000 fund source. So according to federal OMB requirements they would not require an audit. Audits are very costly and usually reserved for corporations. Sole Proprietorships or single member LLC's with one or two facilities use very simple accounting structures. Audits are standardized by federal requirements that are designed for larger corporations that follow CPA general accounting principals. Simply requesting the financial statements, along with banking statements, should provide adequate insight into the financial workings of a small company.

- There is multiple reference to "Reasonable and Prudent Parenting Standards" This term is sometimes capitalized to indicate referral to a specific document. The reference, which is defined in Article 1 definitions, refers to "criterion". The criterion was not defined in the regulations that I could find. Under R21-7-324 F. it defines a position as "staff designated as caregiver to employ the reasonable and prudent parent standard". It then states the licensee must designate a specific staff for each child in care who is authorized and trained to apply the reasonable and prudent parenting standard to decisions involving the child. I do not understand the application of this position. If regulations require one staff member on duty, then I am assuming this position is the same person responsible for the child's care during their assigned duty? This is confusing and needs to be clarified. It also states under R21-7-323K. that the "licensee shall ensure that at least one paid staff who is trained in and authorized to apply the reasonable and prudent parenting standard for each child in care is in a facility at all times" Again, it is unclear how this position is applied to required staffing ratios.

- Under R21-7-329 C. b. it states that during sleep hours, one paid staff member, who is awake, in each building in each facility where children in care are sleeping. This is a change that will have a significant financial burden to agencies that utilize the parent model. If this change is applied to the regulations, it will significantly increase an organization's staffing budget and should therefore application of the change should be deferred until contracts can be changed to reflect the increased budget.

It is clear there will be substantial cost related to implementation of many of the draft regulations. DCS contract administrators should be a part of the decision making team related to these regulation changes in order to be aware of the impact these changes will have on provider budgets funded by DCS. In addition, costs should be considered relative to the change in order to truly determine if the requested change will result in the intended outcome OLR is hoping to achieve.

#15



COMPLETE

Collector: Web Link 1 (Web Link)
Started: Wednesday, September 23, 2015 7:48:32 AM
Last Modified: Wednesday, September 23, 2015 8:32:02 AM
Time Spent: 00:43:30
IP Address: 68.98.49.77

PAGE 1

Q1: Please provide your name (Required)

Peter Bartolini, peter@firmfoundationaz.org, 602-697-1122

Q2: Please indicate your affiliation: (Required)

On behalf of an Organization/Agency

Q3: If you selected Organization/Agency or Other, please specify below:

Firm Foundation Youth Homes

Q4: What do you like/dislike about the draft Chapter 7 Article 3 - Residential Group Care Facilities and Outdoor Experience Programs Rules?

The new rules add a higher level accountability for residential group homes. The addition of trauma-informed care and required initial and annual training will hopefully improve the level of care the precious kids receive. As well, requiring 24 hours of annual training for direct care staff is excellent.

Q5: What would you add to the draft Residential Group Care Facilities and Outdoor Experience Programs Rules?

While trauma-informed care is the right direction, staff turnover will prevent children in care from developing the relationships required to respond to trauma-informed care. No where in sections 310 or 311 does it mention turnover. If an organization has regular staff turnover (2 per home in a 6 month period) it is a sign that they are not hiring the right people, they are not properly training and preparing their staff, or they are not treating their staff well. Damage to a child caused through relationship is best healed through relationship. Staff turnover will only erode an agency's program goals. This includes inter-agency transfers from one home to another. I would add to section 310 or 311 that a certain amount of staff turnover &/or transfer will be investigated (while recognizing that it may be something out of the agency's control).

Q6: What would you remove from the draft Residential Group Care Facilities and Outdoor Experience Programs Rules?

Section 301, G, 2, c - The governing body gives an agency access to very high-level talent. Arizona's foster care crisis is a community-problem and we need to be able to provide a community-based response.

Section 301, G, 5 - This is ambiguously written. Does that mean new members or just a renewed commitment from the current members?

Section 301, G, 6 - This should be removed. The President of a foster care licensing agency would be a very valuable addition to the governing body of a residential group home. Most Boards are volunteer positions.

Section 325, B - How many hours for the initial training of direct care staff? What about MAPP class? Or, even better, what about requiring training similar to therapeutic foster parents?

Section 329, E, 3 - This section is ambiguously written. Sub-part 3, b and 4 are not clear.

Section 356, B, 4 - Does this mean monthly drills with the kids? While I understand th importance of drills, a group home should always try to limit the "institutional" feel of the home and make it as much like a home - because it's their home and those in it are their family. Monthly training or drills with staff, how about semi-annual drills that includes the kids.



Arizona Department of Child Safety

DCS RULES SEPTEMBER 21, 2015 PUBLIC MEETING

COMMENTS

1. Please provide your name

Tori Ferrari

2. Please indicate your affiliation:

Individual

On behalf of an Organization/Agency

Teen Challenge of Az, Inc/Springer

Other

3. Which Rules are you commenting on? (please circle)

R21.7.322 c 9 and c 10

Definitions and General (CWA)

Definitions (Adoption Agency)

Residential Group Care Facilities and Outdoor Experience Programs

Adoption Agency Licensing Requirements

Placing Agency Licensing

4. What do you like/dislike about the draft Rules?

5. What would you add to the draft Rules?

#9. Copy of a valid Level One fingerprint clearance card...

#10. Copy of the application of for a level One fingerprint clearance card...

both?

6. What would you remove from the draft Rules?



Arizona Department of Child Safety

DCS RULES SEPTEMBER 21, 2015 PUBLIC MEETING

COMMENTS

1. Please provide your name

Tori Ferrari

2. Please indicate your affiliation:

Individual

On behalf of an Organization/Agency

Teen Challenge of Az/ Springboard

Other

3. Which Rules are you commenting on? (please circle) R 21.7.325

Definitions and General (CWA)

Definitions (Adoption Agency)

Residential Group Care Facilities and Outdoor Experience Programs

Adoption Agency Licensing Requirements

Placing Agency Licensing

4. What do you like/dislike about the draft Rules?

Correction: should read

3. Training staff in cardiopulmonary resuscitation (CPR) and First Aid according to American Red Cross guidelines as prescribed in R21.7.323.

12. (to be added) Training staff to do the initial health screening prescribed in R21.7.323 provided by a licensed medical professionals.

5. What would you add to the draft Rules?

6. What would you remove from the draft Rules?



Arizona Department of Child Safety

DCS RULES SEPTEMBER 10, 2015 PUBLIC MEETING

COMMENTS

1. Please provide your name

Anika Robinson

2. Please indicate your affiliation:

Individual

On behalf of an Organization/Agency

Other

3. Which Rules are you commenting on? (please circle)

Definitions

Licensing Process for Foster Parents

Licensing Requirements for Foster Parents

Licensing Agency Requirements for Foster Home
Licensing Agencies

Life Safety Inspections

4. What do you like/dislike about the draft Rules?

Not given a lot of time to read new rules due to not enough notice
- Very poorly written.
4 children to a room, what about rooms that are extremely large?

5. What would you add to the draft Rules?

Have them read & approved by actual foster parents.

6. What would you remove from the draft Rules?

- not given enough time to read them all. Can't comment at this time



Arizona Department of Child Safety

DCS RULES SEPTEMBER 21, 2015 PUBLIC MEETING

COMMENTS

1. Please provide your name

TORI FERRARI

2. Please indicate your affiliation:

Individual

On behalf of an Organization/Agency

TEEN CHALLENGE / SPRINGBOARD

Other

3. Which Rules are you commenting on? (please circle) R21.7.301 Licensing Requirements
6. Governing Body Definitions (Adoption Agency) b. Exclusion Definitions (Adoption Agency)

Definitions and General (CWA)

Residential Group Care Facilities and Outdoor Experience Programs

Adoption Agency Licensing Requirements

Placing Agency Licensing

4. What do you like/dislike about the draft Rules?

5. What would you add to the draft Rules?

6. What would you remove from the draft Rules?

waiver for organizations / grand fathering of this standard?

Per our TCAZ organizational documents, our CEO is required to sit on the BOD. Springboard, the only licensed part of TCAZ comprises only 5% of the total organization - entirely privately funded and private placement mkt.



Arizona Department of Child Safety

DCS RULES SEPTEMBER 21, 2015 PUBLIC MEETING

COMMENTS

1. Please provide your name

Tori Ferrari

2. Please indicate your affiliation:

Individual

On behalf of an Organization/Agency

Teen Challenge of AZ/Springboard

Other

3. Which Rules are you commenting on? (please circle) R21.7.323 F

Definitions and General (CWA)

Definitions (Adoption Agency)

X Residential Group Care Facilities and Outdoor Experience Programs

Adoption Agency Licensing Requirements

Placing Agency Licensing

4. What do you like/dislike about the draft Rules?

Question:
• Will OLR be providing this form for physicals for staff or providing agencies with the specific information required on signed form for physician signature.

5. What would you add to the draft Rules?

6. What would you remove from the draft Rules?



Arizona Department of Child Safety

DCS RULES SEPTEMBER 21, 2015 PUBLIC MEETING

COMMENTS

1. Please provide your name

Tori Ferrari

2. Please indicate your affiliation:

Individual

On behalf of an Organization/Agency

Teen Challenge of Az/ Springboard

Other

3. Which Rules are you commenting on? (please circle)

Definitions and General (CWA)

Definitions (Adoption Agency)

Residential Group Care Facilities and Outdoor Experience Programs Shelter Care

Adoption Agency Licensing Requirements

Placing Agency Licensing

4. What do you like/dislike about the draft Rules?

• I appreciate the standards/regulations - they help us continue to excel in the program we provide -

however, as an entirely privately funded / private placement there are unique considerations.

• I would like to propose additional/parallel rules in consideration of this fact as most of these regulations operate under assumptions that do not apply to

5. What would you add to the draft Rules?

the children/families we serve.

6. What would you remove from the draft Rules?



Arizona Department of Child Safety

DCS RULES SEPTEMBER 21, 2015 PUBLIC MEETING

COMMENTS

1. Please provide your name

NATALIE COLLAHAN

2. Please indicate your affiliation:

Individual

On behalf of an Organization/Agency

TMM Family Services

Other

3. Which Rules are you commenting on? (please circle)

Definitions and General (CWA)

Definitions (Adoption Agency)

Residential Group Care Facilities and Outdoor Experience Programs

Adoption Agency Licensing Requirements

Placing Agency Licensing

4. What do you like/dislike about the draft Rules?

R21-7-329 staff coverage

3.

b) paid staff member who is awake during sleep hours w/ 6 or fewer children in the home

5. What would you add to the draft Rules?

if children are placed in a level 7 group home, with 6 to 10 child to staff ratios, I do not believe an awake staff should be required overnight. If a child needs that level of care, a more restrictive placement should be considered. I would add accommodations for different levels of group home facilities.

6. What would you remove from the draft Rules?



Arizona Department of Child Safety

DCS RULES SEPTEMBER 21, 2015 PUBLIC MEETING

COMMENTS

1. Please provide your name

Debbie Mack

2. Please indicate your affiliation:

Individual

On behalf of an Organization/Agency

TMM Family Services

Other

3. Which Rules are you commenting on? (please circle)

Definitions and General (CWA)

Definitions (Adoption Agency)

Residential Group Care Facilities and Outdoor Experience Programs

Adoption Agency Licensing Requirements

Placing Agency Licensing

4. What do you like/dislike about the draft Rules?

The words + description are still very vague and are open to interpretation between workers and are often lead to confusion when agencies get different answers from different workers

5. What would you add to the draft Rules?

Recognition of different levels of care with interpretations

6. What would you remove from the draft Rules?

The threatening nature of content, Partnership and some support that would be offered



Arizona Department of Child Safety

DCS RULES SEPTEMBER 21, 2015 PUBLIC MEETING

COMMENTS

1. Please provide your name

Don Strauch

2. Please indicate your affiliation:

Individual

On behalf of an Organization/Agency

Imm Family Services

Other

c/o Children's Village

3. Which Rules are you commenting on? (please circle)

Definitions and General (CWA)

Definitions (Adoption Agency)

Residential Group Care Facilities and Outdoor Experience Programs

Adoption Agency Licensing Requirements

Placing Agency Licensing

4. What do you like/dislike about the draft Rules?

No objections to the Draft Rules; however, please articulate the definition of the word

5. What would you add to the draft Rules?

"combine or combining" of programs. What specifically does this mean?

6. What would you remove from the draft Rules?



Arizona Department of Child Safety

DCS RULES SEPTEMBER 21, 2015 PUBLIC MEETING

COMMENTS

1. Please provide your name

Don Strauch

2. Please indicate your affiliation:

Individual

On behalf of an Organization/Agency

TMM Family Serv.

Other

c/o Children's Village

3. Which Rules are you commenting on? (please circle)

Definitions and General (CWA)

Definitions (Adoption Agency)

Residential Group Care Facilities and Outdoor Experience Programs

Adoption Agency Licensing Requirements

Placing Agency Licensing

4. What do you like/dislike about the draft Rules?

5. What would you add to the draft Rules?

Better distinction between family style group homes ~~and~~ w/ no more than 3 per ^{and} children per home and larger

6. What would you remove from the draft Rules?

group homes with 4-10 children per bedroom + 12 plus per home



Arizona Department of Child Safety

DCS RULES SEPTEMBER 21, 2015 PUBLIC MEETING

COMMENTS

1. Please provide your name

TORI FERRARI

2. Please indicate your affiliation:

Individual

On behalf of an Organization/Agency

TEEN CHALLENGE / SPRINGBOARD

Other

3. Which Rules are you commenting on? (please circle)

Definitions and General (CWA)

Definitions (Adoption Agency)

Residential Group Care Facilities and Outdoor Experience Programs

Adoption Agency Licensing Requirements

Placing Agency Licensing

4. What do you like/dislike about the draft Rules?

R21. 7. 323

Question: "reasonable and prudent parenting standards" designed for foster care agencies to make decisions regarding age appropriate activity involvement for children in care. Our intake process, as a private placement/privately funded agency makes that determination prior to intake - how does this apply to a shelter care in our situation?

5. What would you add to the draft Rules?

- it is inherent in our program design - is this still required?
- parent consent is sought for any activities out of the ordinary ...

6. What would you remove from the draft Rules?



Arizona Department of Child Safety

DCS RULES SEPTEMBER 22, 2015 PUBLIC MEETING

COMMENTS

1. Please provide your name

Meghan Arrigo

2. Please indicate your affiliation:

Individual

On behalf of an Organization/Agency

Children's Action Alliance

Other

3. Which Rules are you commenting on? (please circle)

Definitions and General (CWA)

Definitions (Adoption Agency)

Residential Group Care Facilities and Outdoor Experience Programs

Adoption Agency Licensing Requirements

Placing Agency Licensing

4. What do you like/dislike about the draft Rules?

See attached packets on rules and definitions

5. What would you add to the draft Rules?

6. What would you remove from the draft Rules?



Arizona Department of Child Safety

DCS RULES SEPTEMBER 22, 2015 PUBLIC MEETING

COMMENTS

1. Please provide your name

Lynn Blevins

2. Please indicate your affiliation:

Individual

On behalf of an Organization/ Agency

Happy Acres Children's Home

Other

3. Which Rules are you commenting on? (please circle)

Definitions and General (CWA)

Definitions (Adoption Agency)

Residential Group Care Facilities and Outdoor Experience Programs

Adoption Agency Licensing Requirements

Placing Agency Licensing

4. What do you like/dislike about the draft Rules?

It is clear, and great to be a part of change.

5. What would you add to the draft Rules?

Define what is expected from reg group home compared to special needs.

6. What would you remove from the draft Rules?

We are a non-profit

Recommendations for DCS Draft Rules

As stated under R21-7-301, part B, 2: If licensed as a residential group home facility or shelter care facility, provide for a minimum of six children in care up to the minimum capacity listed on the license.

Recommendation: the minimum number to be five children in order to allow for smaller group homes to become licensed specifically to care for high acuity youth who require additional supports as well as an increased quality of care due to staff/child ratio.

As stated under R21-7-301, part E, 2: OLR shall deny or revoke a Child Welfare Agency license if the agency knowingly or willingly hires or retains any staff, having contact with children in care has ever been convicted or is awaiting trial for a sex offense, has been involved in child abuse, child neglect, selling narcotics, or contributing to the delinquency of a minor, or has a substantial criminal record.

Recommendation: What specifically constitutes a substantial criminal record, in this section clearly define.

As stated in R21-7-301, licensing requirements, E, part 1, A licensee shall ensure all child welfare agency staff are fingerprinted, comply with the requirements of A.R.S. 46-141 and provide evidence of possession of a valid Arizona Level One Fingerprint Clearance Card.

Recommendation: It is currently unclear if employees can start employment once fingerprinted or once the hard copy of finger print clearance card is obtained.

As stated in under R21-7-301, part G, 5: The agency shall replace all governing body members who becomes inactive for six months. Terms for governing body members shall be overlapping. The agency shall elect one-third of the governing body membership annually to ensure continuity of policy, and the introduction of new and changing points of view.”

Recommendation: How does this apply regarding for-profits, non-profits and LLC's. In the old Article the Governing body can include owners of the agency. Many group homes are operated under C corp rules as sole owners and can be on the governing board. New rules indicate an owner or anyone receiving compensation from the agency cannot be on the board of directors. Nearly all the agencies are sole proprietorships, s corp or c corp. If this was the case, then the group homes would be operated as a 301 C-3 not for profit. In many cases, group homes owners utilize their personal assets to keep the agency running and use their personal credit used to buy homes, agency vehicles and secure lines of credit.

As stated in R21-7-301 G. Governing Body

1. A Child Welfare Agency shall provide OLR with a current list of all Board or members of the governing body, their addresses, and offices held, if any.

3. The governing body shall be composed of adult residents who have a genuine interest in child welfare, concern for social conditions in the community, and reflect equitably the ethnic and

economic standing of the population served. The governing body members shall have sufficient time to discharge their obligations and have a variety of interests, talents, and points of view so that no single group or profession will have a controlling voice.

6. Exclusion from Board membership. Management and staff of the Child Welfare Agency shall not be members of the governing body. Any individual employed by, or who receives compensation from a Child Welfare Agency licensed under this Chapter, or a foster home licensing agency, contracted with the Department and regulated under Title 21, Chapter 6, Article 2, shall not be a member of the governing body.

Recommendation: This section is problematic primarily because it is unclear whether it is required to have a governing body or whether it is left to the discretion of the organization. The language "if any" at the end of R21-7-301 could be interpreted as referring to either the prior language of "offices held" or "members of the governing body, (and) their addresses". This section is also problematic in that it does not distinguish between for profit versus non-profit entities. In the current code under R6-5-7424 (A, 2), the differences between what is required of a non-profit versus for profit agency are clearly spelled out. This part of the current code should be maintained and transferred over to the new code. While a governing body of outside membership certainly has a role to play in a non-profit setup, governing autonomy is a primary function of a for-profit entity and the current code under R6-5-7425 (A, 2) provides for that necessary autonomy of decision making. This code should be maintained and over to the final draft of this new section R21-7-301.

As stated in R21-7-307. License Amendment: Application for an Operating Certificate for an Additional Facility

B. Additional Facility.

1. A currently licensed agency that wishes to obtain an operating certificate for an additional facility may file an application for an amended license to add the new facility if the agency has:
 - a. Had one year of verified successful experience operating a child welfare agency in Arizona;

Recommendation: Group homes that were licensed within a year of the effective date of this code should not be bound by these new restrictions since these were not the terms under which these group homes entered into in good faith with the state at the start of their contracts. All licenses issued within a year or less of the effective date of this code should be grandfathered in to allow the expectations of the state as defined throughout the organization's initial licensing process to continue to match up with present realities.

R21-7-314. Denial, Suspension, and Revocation of a License or Operating Certificate

A. The Department may deny, suspend or revoke any license when:

4. An applicant, licensee, or staff has been denied a certificate or license to provide care to a child or vulnerable adult;
5. An applicant, licensee, or staff has had a certificate or license to provide care to a child or vulnerable adult suspended or revoked;
6. An applicant, licensee, or staff has had a fingerprint clearance card meeting Level One requirements suspended, denied, or revoked;
7. An applicant, licensee, or staff has been convicted of or is awaiting trial on the criminal

offenses listed in A.R.S. § 46-141.

Recommendation: Provisions should be added to this section that allow the licensee to immediately dismiss any member of the staff or agency once it is known that this staff or agency member has violated any provision of this section. If the agency refuses or is unable to dismiss the staff or agency member, then the denial, suspension, or revocation criteria should apply.

C. OLR shall deny, suspend, or revoke a license when an agency:

1. Retains staff who have been convicted of or are awaiting trial on the criminal offenses listed in A.R.S. § 46-141;
2. Allows an adult other than those described in subsection (C)(1), who has been convicted of or is awaiting trial on the offenses listed in A.R.S. § 46-141, to reside at a facility; or
3. Allows any staff or other adult at the facility, who has committed an offense listed in A.R.S. § 46-141, to have contact with children in care.

Recommendation: The word “knowingly” should be added to the beginning of each subsection 1, 2, and 3.

Recommendation: (R21-7-310) An amendment should be added to submit quarterly and to utilize only last four digits of social security numbers to avoid identity theft of staff’s social security numbers. OLR should provide a secure portal to submit information for both paid and unpaid staff.

Recommendation: Currently there is confusion regarding the start date and hire date

Recommendation: (R21-7-328): Clarification is needed regarding which party is responsible if a youth cannot stay at a treatment facility upon return from runaway. For a runaway from an emergency placement, if child is gone more than 24 hours the placement is terminated. If a placement was a regular placement and is gone for 72 hours, placement is terminated unless a bed hold was placed.

As stated in R21-7-325, a licensee should have an OLR approved written plan for orientation and training of all staff. The plan should include a method for the licensee to evaluate whether the person has actually learned the information that was the subject of orientation or training.

Recommendation: The plan should include a method for the licensee to evaluate the skill level of the new employee and his/her ability to demonstrate and restate the information that was the subject of the orientation or training. Learning outcomes could be demonstrated through an evaluation process conducted by community partnerships with licensed professionals, youth, parents, caregivers and family members. Another method to demonstrate the skills learned would be to have the new employee complete a Strengths, Needs and Culture Discovery, (SNCD) on at least one young person living in the group home. The SNCD would be shared with all group home staff, child & family teams and become part of the ISP record.

B. All staff should receive initial orientation and training before assignment to solo supervision of children.

Recommendation: All staff should receive initial orientation, training and a short period of “hands-on shadowing with a seasoned employee before assignment to solo supervision of children.

1. Acquainting staff with the licensee’s philosophy, organization, program, practices, and goals;
2. Familiarizing staff with the licensee’s policies and procedures, including those on confidentiality, client and family rights, grievances, emergencies and evacuations, behavior management, preventing and reporting child abuse or neglect, recordkeeping, medications, infection control, and treatment philosophy;
3. Training staff in cardiopulmonary resuscitation (CPR) and first aid according to American Red Cross guidelines as prescribed in R21-7-323. Training staff to do the initial health screening prescribed in R21-7-323; the licensee shall have a licensed medical professional provide this training;

Recommendation:

Add: Training staff in Methods in Engaging Youth, Parents, Caregivers and Families

- Identifying strengths and needs
- The value of Functional Strengths in ISP planning

4. Training staff in trauma-informed care of children

Recommendation: Training staff in trauma informed care of children with training provided by a licensed behavioral health professional with experience in trauma-informed care and interventions; delivered in partnership with 1-2 parent or youth leaders who have personal life experience in a group home setting.

5. Training staff in mandatory reporting of suspected child abuse and neglect under A.R.S. 13-3620.

6. Training staff in de-escalation and any physical restraint practices used at the facility by an instructor certified and qualified under this subsection. An instructor is certified

1. All staff shall receive at least four hours of annual training.
2. All staff who provide direct care services as their primary responsibility shall receive at least 24 hours of annual training.
3. The training shall cover matters related to the person’s job responsibilities, and at least the following subjects, as appropriate to the characteristics of the children in care at the facility:

R21-7-336, Children's Clothing and Personal Belongings

- A. A child may bring clothing and personal belongings to the facility and acquire belongings while in care, in accordance with the child's service plan and the facilities policy.
- B. If a licensee limits a child's right to have, wear, or display certain clothes or personal belongings, the licensee shall:
 - 1. Have a written policy explaining the limitations and the reasons for the limitations and
 - 2. Explain the limitations to the child in a form and manner that the child can understand.
- C. When a child is admitted in the licensee's care, the licensee shall inventory the child's clothing and personal belongings; the licensee shall provide a copy of the inventory to the child placing agency or person and keep a copy in the child's file
- D. The licensee shall either store any restricted possessions or return the possessions to the child's child placing agency or person.
- E. The licensee shall ensure that each child has a personal supply of clean and seasonable clothing as required for health, comfort, and physical well-being and as appropriate to the child's age, gender, size, and individual needs
- F. F. The licensee shall allow a child to help select his or her own clothing when developmentally appropriate and allowed by programmatic requirements.
- G. G. The licensee shall have a policy governing retention, return, and disposal of the clothes and personal belongings of a child who has had an unplanned discharge. The policy shall include obtaining written approval from the child's case manager, if applicable, prior to disposal of any clothing or personal belongings.

Recommendation: H. Cell phones, tablets, personal electronic devices. Pertaining to case plan and DCS approval, all children regardless of age may be allowed to have cell phones/electronic devices and not be treated any differently than "normal children".

- 1. Need to be secured and available for use as determined by SNCD and ISP
- 2. Licensee will provide reliable and adequate internet service to power electronic computer devices

As stated in R21-7-340. Visitation, Outings, Mail, and Telephones

R21-7-340. Visitation, Outings, Mail, and Telephones

A. The licensee shall have a written policy and procedure that conform to the requirements of this Section and this Chapter, regarding visitation, mail, telephone calls, and other forms of communication between a child and the child's family, friends, and other persons.

1. The licensee shall allow a child reasonable privacy during a visit unless the child's service plan requires supervised visitation.

A licensee shall have facility visiting hours that meet the need of a child and the child's parents.

- 3. A licensee shall not deny, monitor, or restrict a child's communication with the child's social worker, attorney, Court Appointed Special Advocate, guardian ad litem, Child Safety Worker, clergy

Recommendation: Add parents, caregivers, family members and approved friends and acquaintances

R21-7-342. Recreation, Leisure, Cultural Activities, and Community Interaction

R21-7-342. Recreation, Leisure, Cultural Activities, and Community Interaction

A. A licensee shall have a written plan for making a variety of cultural, religious, indoor and outdoor recreational and leisure opportunities available for a child in care.

Recommendation: A licensee shall have a written plan for making a variety of cultural, religious, indoor and outdoor recreational and leisure opportunities available for a child in care. The child, along with his/her parent/s, caregiver/s and family members will help create this plan, which draws from the SNCD document referenced in section R21-7-325. If SNCD is not available, it can be obtained from the High Needs Case Manager in the Behavioral Health System, (Much evidence is available linking the importance of art, play and enjoyable activities and engagement to wellness, both physically and mentally). The plan shall:

1. Reflect the interests and needs of the child in care, including an allotment of time for the child to pursue individual interests, and time to address the special needs of the child in the living unit;

2. Provide for use of community resources such as schools, museums, libraries, parks, recreational facilities, and places of worship;

Recommendation: Costs for these outings will be addressed and allowed in the written plan as stated above

3. Specify procedures for a child's participation in community activities and use of community resources.

B. A licensee shall help a child in care learn about the community in which the facility is located and use community resources, as developmentally appropriate.

C. A licensee shall arrange transportation and supervision so that a child in care may attend community activities and maximize use of community resources.

D. The licensee shall make available recreational equipment that is suitable to the size, age, and developmental level of children in care.

Recommendation: The list of identified recreational equipment will be determined in partnership with the family and driven by the child's interests, abilities and needs

R21-7-351 states that the licensee should ensure that behavioral health services begin within 72 hours of removal through the behavioral health system.

Recommendation: Group homes do not have the authority to submit referrals to any behavioral agencies and need the DCS caseworker to submit any referrals for services.



September 21, 2015

Ms. Carrie Senseman, Lead Rules Analyst
Department of Child Safety
P.O. Box, 6030, Site Code C010-23
Phoenix, AZ 85005-6030

Re: OLR rule rewrites & revisions

Hello Carrie,

In my former role as Manager of the Child Welfare Licensing Unit with OLR, I provided a lot of input and feedback regarding the revision of the document currently known as "Article 74." Unfortunately, due to my ongoing workload and staff shortages at that time, I was unable to contribute everything I wanted to before turning all the materials over to you and your team for the final stages of review and revision.

However, now I am in a different role, but still have a vested interest in the final approved version of the new Chapter 7, Article 3 as I have formed my own consulting business that works with the providers licensed by DCS/OLR. I also have an interest in the new Article 1 and the Life Safety rules.

Before I go into my specific one-by-one comments and recommendations, I would like to say that you and everyone involved have done an excellent job on this project and many of the changes included appear to streamline some processes, create more accountability for the licensee, and update much of the outdated information that was present in Article 74.

However, let me also preface the rest of my information by stating that my understanding was that one of the mandates of revising rule packages was not to create any undue burdens or hardships upon the individuals being licensed. After performing a review of the proposed rules for Article 3, I see several changes that I believe are going to create *undue burdens* and hardships upon the licensees. In short, the Undue Burden standard states that the Legislature cannot make a particular law that is too burdensome or restrictive of one's fundamental rights. I would think that that same philosophy would pass down to rules and codes as well?

For example, many of the agencies currently licensed by OLR are husband-and-wife teams, two-person partnerships, and other "mom and pop" type arrangements of people who have a love for children and a desire to serve them by providing group care. These people have done their best to pull together the needed information, finances and other resources to form, license and continue to operate their agencies. They have jumped through all the required hoops in good faith and earned the right to post a license on their wall.

Now requiring them to add a 5-member Board of Directors that cannot include themselves or any relatives will place a great burden on many of the new and smaller providers. I do not dispute the need

for the extra level of accountability and oversight that a Board provides, but I believe that the requirements need to be less restrictive and reach a "middle ground" that would still require the needed leadership and oversight, but without pulling oversight of the agency out of the hands of these people who have put their hearts and souls into them. This is just one of several examples I have observed that I think fall under the undue burden realm.

Having said that, I would like to offer the following recommendations and feedback regarding the proposed new Chapter 7, Articles 1 & 3.

TITLE 21, CHAPTER 7, ARTICLE 1

R21-7-101(1)

- I'd like to recommend that you add "1:1" as a term to be defined. You could define it as "Signifies an arrangement made by a child care provider in which a single designated staff member is assigned to be responsible solely for the monitoring and care of a single child. This staff member is not considered part of the client-staff ratio in accordance with R21-7-329(E)(2)."

R21-7-101(79)

- I think the definition of "Residential group care facility" needs to be changed to say "A Child Welfare Agency that is licensed to receive five or more children. . . ." See my comments regarding this matter below in R21-7-301.

R21-7-101(86)

- I think the definition of "Shelter care facility" needs to be changed to say "A Child Welfare Agency that is licensed to receive five or more children. . . ." See my comments regarding this matter below in R21-7-301.

R21-7-102(B)(1)(b)(ii)

- Chief Financial Officer. See comments below in R21-7-324(B).

R21-7-106

- Again, I see these changes as creating an Undue Burden. See additional comments under R21-7-301(G)(6).

TITLE 21, CHAPTER 7, ARTICLE 3

Alternative Method of Compliance

- I did not see a section addressing this. Was it intentionally removed, or was it accidentally overlooked? If removed, several agencies are going to experience major hardships when they have to try to comply with the standards that they were previously granted AMOCs for (for

to sound like this information needs to be completed and brought with the applicant at the time of the orientation meeting. Perhaps letter (C) could be worded to say "At the orientation OLR shall review and explain the following requirements:"

X R21-7-306(A)(1)(b)

- The license has never listed all the individual facilities operated on it. I would either change this statement to read "List the total number of children the agency is authorized to serve" or change the format of the license so that you can list all of the facilities on it (Think about listing all the facilities on one license for Sunshine Residential and FSR!)

X R21-7-311(B)

- Any time of the day or night?!?!? I think this is totally unreasonable and inappropriate. However, I support leaving this wording in the new rules so that providers are aware that this falls within the scope of OLR's authority to do so. But at the same time, I would hope that with this authority that OLR would set reasonable internal policies and be judicious about how this right is exercised. I can see the benefit of, and need for visiting homes during the evening or on weekends on occasion, but to drop in at midnight or 3am, or some other ungodly time like that, just seems totally unreasonable.

X R21-7-313(B)(5)

- I would slightly change the wording on this to make it clearer that this is referring to a Directive CAP. I would say the following, "In some situations, OLR may prepare and issue a *directive* corrective action plan rather than allowing the agency to prepare its own corrective action plan [especially since the term is included in the definitions: R21-7-101(32)]. OLR shall prescribe the terms of the corrective action plan, including the time frames involved, and the other information in subsection (B)(3)" [Shouldn't it be (B)(3) rather than (C)?]

X R21-7-313/314

- There is no paragraph or section discussing provisional licenses. Did you overlook it or intentionally leave it out? It is addressed in R21-7-104, so don't you also need to include it in this section too? It is also addressed in the revised statutes, so you can't just remove it, can you?

X R21-7-316(A)

- "Reasonable and prudent parenting standard." Is OLR going to educate the providers as to what this means and what is expected of them? It is hard to ask someone to include a statement that they are going to commit to something in its philosophy and purpose when they may not even understand what it is.

R21-7-316(F)

- Since you reference A.R.S. 8-529, do you need to include it in its entirety? I noticed that when you compare this section to the actual wording from that statute, that not everything is included here.

R21-7-320(A)(1 & 2)

- I believe that you reversed the statements for #s 1 and 2. #1 should read "Each record shall be kept up-to-date by the licensee, and shall have a face sheet listing the following information:

- Appeal Rights

- ✓ a) The name, gender, race . . .
- #2 should read "The record shall be readily accessible to persons providing services to the child and shall include at least the following information:
 - a) All documents related to . . .

✓ R21-7-322(C)(10)

- I recommend that the wording be changed to also include the time frame requirements from A.R.S. 46-141 to say:
- (10) "If the employee does not have a clearance card at the time of hire, a copy of the application for a Level One fingerprint clearance card, which must be submitted within seven working days of the date of employment as required by A.R.S. 46-141"

| R21-7-322(C)(10/11)

- Add a new #11 – "Copy of the notarized form provided by OLR certifying whether the staff is awaiting trial on or has ever been convicted of any of the criminal offenses listed in A.R.S. 41-1758.07 and 46-141."

R21-7-322(D)(9)

- Add the work "Arizona" to say *valid Arizona driver's license*

R21-7-322

- An issue that has become more prevalent over the past few years is the use of temporary staff from temp agencies to provide direct care to children in care. There were concerns about whether these staff were going through the same screening and training as staff employed by the agency. Plus, there was a lot of confusion and uncertainty as to how much, and what type of documentation must be maintained on these temporary staff. You might want to consider adding a section in here that addresses that issue and sets some guidelines regarding these individuals.

R21-7-323

- Do you feel the need to place any restrictions on individuals serving more than one agency at a time? For example, I know that a lot of the newer agencies, are having one person serve as the CEO of one agency and also as the Program Director of another agency. Or one person may be the CEO of one agency, and then work as direct care staff for another agency. Do you think there needs to be language addressing those types of situations?

R21-7-324(B)

- "A licensee shall have a chief financial officer for the agency." Again, I go back to my earlier statements. Many currently licensed programs are small mom-and-pop type of organizations. Yes, I agree that agencies need to have solid fiscal management, but to require them to install someone with the credentials listed for their small agencies that employ perhaps only 5 people, to me, is overkill. This is an excessive burden to place on them when there is probably already only one person acting as CEO and Program Director to begin with. Could you require that the agency needs to have someone in this capacity to oversee the fiscal management of the agency, but not necessarily have to be an employee of the agency? For example, what if they had a cpa who they could use as a consultant to help them manage their finances? Would that suffice to meet the intent of this change?

R21-7-330(B)

- So you are no longer including the requirements for ongoing care from R6-5-7438(B)? I think it would be helpful to leave in the sentence that says "a licensee may continue to care for an individual under age 22 who was a child in care and turned age 18 while in care." To me, this extra wording helps to clarify the conditions that will allow a child to remain in care.
- What about the requirements that a child must be either pursuing a high school diploma or enrolled in vocational training (or college)?
- I think the intent of this rule is to ensure that a young adult who remains in care is involved in becoming self-sufficient so that he/she can move out and care for him/herself and not just sitting around living off the state. It seems like it would be helpful to elaborate more on some of these criteria. Does the reference to A.R.S. 8-521 address these things?

R21-7-333

- There has always been confusion as to whether the service plan must be a plan created by the licensee, or can the plan be provided by DCS, or another professional entity (i.e., JFCS, LaFrontera, etc). Perhaps look at this section again and see if additional wording is needed to make it clearer as to what plans are acceptable

R21-7-344(E) (apparently mislabeled as 351)

- I would recommend adding a couple more items to the required first aid supplies:
#11) An oral thermometer (non-mercury/nonglass), or digital ear thermometer
#12) An instant cold compress
#13) Antibiotic ointment packets
#14) Antiseptic wipe packets

R21-7-350

- This section is titled "Buildings; Grounds; and *Water Supply*," but yet you removed the paragraph that addresses water supply [see R6-5-7458(D)]. There are several currently licensed providers that have private wells that this section pertains to, so I think it needs to remain in the new Article 3 in some form or another.

R21-7-351(F):

- This rule has always been irrelevant and pointless. First of all, if you look at the context of this rule, it is in a section talking about the facility's residential environment. So, the word here should be "thermostat" and not "thermometer." Secondly, what does it matter whether it is in 2 degree increments or not? The majority of thermostats nowadays are digital anyway, and therefore will not be in compliance with this rule. If you keep this rule, it should read something like, "The licensee shall install a thermostat to regulate environmental temperatures that is maintained in good working order."

R21-7-352(B):

- This is a GREAT idea to add this requirement for larger facilities to be required to become licensed as a food establishment.
- However, you need to be careful about the language on this. In line (1) it states that a Child Welfare Agency that has a licensed capacity of more than 20 residents must obtain a food establishment license . . . However, the actual wording in 9 A.A.C. 8, Article 1 refers to a

“facility” not an agency. The way you have it worded would dictate that every agency with a total approved capacity over 20 would have to meet this requirement, (perhaps 15-25 current agencies), but I think the rule is referring only to an actual “facility” that houses more than 20. This would only affect a handful of current licensees (Rite of Passage, Sunshine Acres, StreetLight USA)

R21-7-352(C)(3):

- Should read “Not use defective, or damaged dishes or utensils”

R21-7-352(C)(5):

- Conflicts with R21-3-352(D)(3)(a) – 45* or 41*?

R21-7-352(C)(4):

- Once you establish the refrigerator temperature, then you will need to adjust #4 so that it matches

R21-7-352(C)(6):

- Says the same thing as R21-3-352(D)(5). Do they both need to be in there?

R21-7-352(C)(11):

- Says the same thing as R21-3-352(E)(1). Do you need both?

R21-7-352(C)(12):

- Says almost the same thing as R21-3-352(E)(2-4). Do you need both?

R21-7-352(E)(3):

- In 10 years of working for OLR I never came across an NSF-listed dishwasher. I think it is pointless to include it in the requirements as long as the domestic dishwasher with sanitizer cycle accomplishes the same goal.

R21-7-353(A)(2)(b)(iii):

- I think this needs to be clarified to say “The window opening measures at least 22 inches on each side . . .” There has been a lot of confusion and disputes about this rule over the years and I think it needs to be clear that the rule is talking about the opening not just the window itself

R21-3-354(A)(1)(b):

- Not sure of the reason for changing this from every eight children to every seven children?

R21-7-356(C)(6)(a):

- The wording needs to be changed to be more accurate. #5 talks about someone *inspecting* a fire extinguisher, and recharging it if necessary. Then #6 goes on to talk about documentation but says it should be the date it is *charged*. What if it doesn't get charged? I believe this is supposed to say “Document the date that a fire extinguisher is inspected and the person or agency responsible for inspecting it. This makes more sense since this is the documentation that we have been observing for the past 10 years.

SYNC

R21-7-357(E)(6)(a & c):

- (a) "Install, test, and check carbon monoxide monitoring equipment . . . according to the manufacturer's instructions"
- (c) "At the facility, keep a copy of the manufacturer's instruction, and, for one year a record of the tests."
- This has always been confusing because (a) says to conduct tests according to manufacturer's instructions, and then (c) says to conduct a record of tests for one year. Is that referring to just the first year and then it is not required any longer?
- Plus, why do they need to keep the instructions for the carbon monoxide detectors but not the smoke detectors?
- I think it would be clearer and simpler if you did the following:
 - (a) "Install, and test carbon monoxide monitoring equipment in a facility's residential environment according to manufacturer's instructions;
 - (b) Maintain the monitoring equipment in good working condition;
 - (c) Clean and test carbon monoxide monitoring equipment at least every three months (or one month, etc). The licensee shall keep a written record of the cleaning and testing at the facility [see R21-3-356(C)(3)]

R21-7-356(G-H):

- Why did you remove section R6-5-7465(H) regarding banning firearms and ammunition? This section on safety needs to remain very clear about this.

ChB
MST

R21-7-357(I):

- I think this section regarding Telephone service needs to include language regarding the use of cell phones and landline phones. I think it is currently unclear as to whether an agency can use just a cell phone in a group home or must it be a landline phone. This section needs to be reworded so that this requirement is clear.

R21-7-357(I)(3)(b):

- I think OLR should be added to the numbers that the licensee is required to list on the emergency telephone numbers list. Since there are numerous items that agencies are required to report to OLR, it would make sense to have its number right by the phone.

R21-7-359(C)(1):

- This little paragraph has caused so much confusion over the years. The wording needs to be changed to eliminate the examples that are given. Because it states "such as a recreational trip of four hours or more, or an outing where emergency medical services cannot respond within 12 minutes," many agencies lock onto those items as the only ones that they document.
- I believe that the emphasis and intent of this rule is that the licensee needs to document "every non-routine outing." The examples inserted into this have just muddied the waters for everyone trying to interpret this.
- I think this section should read:
"For every facility sponsored outing that is not part of the daily routine, a licensee shall maintain, at the facility, a record of the following information . . ."
- Then, you could add a follow up paragraph to identify what might be considered non-routine outings (church, library, sporting event, movie, picnic, etc) if that would help clarify.

R21-7-359(E)(1)(c):

- I agree that the agency should maintain documentation of regular, routine maintenance and repairs, but I see no reason why it should have to remain "on board" in the vehicle. I have maintained regular maintenance records for my vehicles for the past 30+ years and have never once felt the need to keep them in the vehicle. I agree with the requirement, just not the need to keep the documentation in the vehicle. Maintaining it at the facility office would still fulfill the main intent of this rule, which is the maintenance of the vehicle, not where the records are to be stored.

R21-7-359(F):

- Car Seats and Seat Belts. Great addition. However, what is the quantity requirement? For example, let's say a home is licensed for 10 with an age range of 0-17. Obviously they need to maintain one or more car seats because of the possibility of caring for infants or toddlers. But, how many car seats will they be required to maintain? 10? If you're going to include this section, you will need to establish how to determine whether an agency is in compliance or not, and how the agency will know how many seats they need to keep on site.

Once again, I want to congratulate you on the excellent job that you and others did in rewriting these rules. They were sorely in need of a makeover, and I believe there are some excellent changes and revisions included in here.

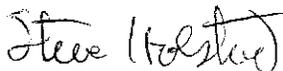
As you know from the work I have done with OLR in the past, I put a lot of thought into these matters, and have gone through this proposal with a fine-tooth comb. I hope you will give serious consideration to the recommendations I have made throughout this document.

As a final thought, I would just like to reiterate that there are several proposed changes that I believe place an undue burden on many of the currently licensed residential providers with CWL. These changes have good and solid intentions behind them, but at the same time seem to invalidate and override what many of the small providers have already had to work for and accomplish in order to get to where they are at today. Please give additional consideration to the following topics/issues to determine if there are alternative ways to write the rules that would accomplish what OLR wishes to accomplish, but still allow these licensed providers to maintain some sense of the agencies that they've created through their own blood, sweat and tears:

1. Requiring homes to have a minimum of 6 children;
2. Requiring non-corporate agencies to have Governing Bodies with a minimum of 5 members, that cannot include the owner or other family members;
3. Requiring agencies to have Chief Financial Officers

Thank you for your consideration.

Respectfully,



Steve Holstad, Owner
HOLSTAD Consulting, LLC
holstadconsulting@gmail.com; (480) 788-1503

Proposed Exceptions to Title 21 Chapter 7 Article 3

These proposed exceptions are for those Residential Group Care Facilities and Shelter Care Facilities that are privately funded and receive only private placements. The regulations as written, and the proposed draft revisions of those regulations recently proposed do not take into consideration currently licensed agencies that operate independent of case workers, behavioral health agencies and foster care placing agencies. While most these regulations are reasonable for these few agencies and do not place an undue burden to achieve compliance, others are unnecessary given the children and families being served.

Below are some suggested exemptions for the Residential Group and Shelter Care facilities that are both privately funded and receive only private placements. Additionally, the reasoning for the requested exemption is provided.

Section	Text to be exempted	Reasoning for Exemption Requested
<p>R21-7-301 Licensing Requirements</p>	<p>G. Governing Body 6. Exclusion from Board Membership. Management and staff of the Child Welfare Agency shall not be members of the governing body. Any individual employed by, or who receives compensation from a Child Welfare Agency licensed under this Chapter, or a foster home licensing agency, contracted with the Department and regulated under Title 21, Chapter 6, Article 2, shall not be a member of the governing body.</p>	<p>Exemption Requested. Agencies NOT contracted with the State of Arizona do not receive public funding. While understandable that it would be inappropriate for those agencies that receive funding from the state to hold positions on the Governing Board of the agency to assure the best fiscal integrity and accountability, those organizations that do not should be made exempt from this regulation.</p>
<p>R21-7-308 Application for Renewal of License and Operating Certificate, Voluntary Closure</p>	<p>D. With a renewal application, the agency shall also submit the following documentation:</p>	<p>Exemption requested. Privately funded, non-contracted agencies should submit the requested information during the licensing renewal process, however, in recent years; our agency has been requested for additional information regarding cash flow and debt levels. These agencies should be exempt from such requests as the financial sustainability of the individual agency is not a financial issue for the State. There is no financial risk to the state of Arizona or concern regarding closure and replacement of students of these agencies. Financial information beyond what is listed in this regulation should not be required.</p>
<p>R21-7-323 General Qualifications for Staff</p>	<p>K. The license shall ensure that at least one paid staff who is trained in and authorized to apply the reasonable and prudent parenting standard for each child in care is in a facility at all times.</p>	<p>Exemption requested. Reasonable and prudent parenting standards were designed specifically to assure that children in state care were given the opportunity to participate in activities that are developmentally</p>

<p>R21-7-324 Qualifications for Specific Positions; Exclusions</p>	<p>C. Program Director: A licensee shall have at least one person who is responsible for development, implementation, and supervision of an agency's programs and services. This person shall have at least: 1. A Master's degree in social work or a related area of study from an accredited school and at least one year experience in the child welfare or child care services field; or 2. A bachelor's degree in social work or a related area of study from an accredited school and two years of experience in the child welfare or child care services field.</p>	<p>appropriate for them to create as normal a childhood experience as possible while out of the home (i.e. sleep overs at friends, etc). Placements in Teen Challenge / Springboard are made by the parents themselves for a 3-5 month time period. All activities are group activities and are designed into the program itself. Any activities children in Springboard may have opportunity to participate in require written parental permission. Parents are directly involved in the authorization of and participation in all program activities by their children. Additional training in this area is unnecessary in private placement agencies.</p> <p>Proposed Change: Keep the written requirements and ADD: OR 3. Education consistent with the program philosophy and methodology, i.e. Faith-based education through recognized institutions, certifications of ministry, etc. Additionally, at least one year of experience in the child welfare or child care services field is required.</p> <p>Privately funded and private placement agencies typically have a faith component. As such, many of those in leadership have acquired education and/or certification through faith-based organizations. This should be an acceptable level of education for program director.</p>
<p>R21-7-324 Qualifications for Specific Positions; Exclusions</p>	<p>F. Staff designated as caregiver to employ reasonable and prudent parenting standard. The licensee shall designate a specified staff for each child in care who is authorized and trained to apply the reasonable and prudent parent standard to decisions involving the child's participation in age or developmentally appropriate activities.</p>	<p>Exemption Requested.</p> <p>Reasonable and prudent parenting standards were designed specifically to assure that children in state care were given the opportunity to participate in activities that are developmentally appropriate for them to create as normal a childhood experience as possible while out of the home (i.e. sleep overs at friends, etc). Placements in Teen Challenge / Springboard are made by the parents themselves for a 3-5 month time period. All activities are group activities and are designed into the program itself. Any activities children in Springboard may have opportunity to participate in require written parental permission. Parents are directly involved in the authorization of</p>

		<p>and participation in all program activities by their children. Additional training in this area is unnecessary in private placement agencies.</p> <p>Exemption requested.</p>
<p>R21-7-325 Orientation and Training for Staff</p>	<p>B.4. Training staff in trauma-informed care of children.</p>	<p>SAMHSA developed the Trauma-Informed Approach and Trauma Specific Interventions specifically to address those issues associated with children involved in the behavioral health care system, not private residential programs that are working with children who enter the program voluntarily with full family support and involvement.</p> <p>Exemption requested.</p>
	<p>B.11. Training staff in the Reasonable and Prudent Parenting Standards</p>	<p>Reasonable and prudent parenting standards were designed specifically to assure that children in state care were given the opportunity to participate in activities that are developmentally appropriate for them to create as normal a childhood experience as possible while out of the home (i.e. sleep overs at friends, etc). Placements in Teen Challenge / Springboard are made by the parents themselves for a 3-5 month time period. All activities are group activities and are designed into the program itself. Any activities children in Springboard may have opportunity to participate in require written parental permission. Parents are directly involved in the authorization of and participation in all program activities by their children. Additional training in this area is unnecessary in private placement agencies.</p> <p>Exemption requested.</p>
	<p>C.f. Attachment and separation issues for a child and family C.i. A child's need for permanency and how the agency works to fulfill this need. C.K. Reasonable and Prudent parenting Standards</p>	<p>Private placement children, entering the program voluntarily, do not encounter the traumatic separation or permanency issues that children in state placement might when removed from their homes and parents abruptly with no clear picture of when reunification may occur.</p> <p>As private placement agencies are working with the families directly with frequent communication, an exemption is requested from this training as it is unnecessary.</p>

<p>R21-7-329 Staff Coverage; Staff-Child Ratios</p>	<p>D. A licensee shall have paid staff in each building in each facility that are trained and authorized to apply: 1. The reasonable and prudent parenting standard</p>	<p>Exemption requested for reasons noted above in regards to Reasonable and Prudent Parenting lack of applicability in private placement facilities. Exemption / Changes requested.</p>
<p>R21-7-333 Child's Service Plan, Preparation; Review; Planning Participants</p>	<p>A. Service Plan Contents: A child in care shall have a personalized service plan tailored to the child's unique background, needs, strengths weaknesses and problems. The plan shall include at least the following information: 5. Identification of persons invited to participate in service planning; 6. The names and, if available, signatures if the persons who participated in service-planning and 7. Identification of persons responsible for implementing the service plan, with an explanation of each person's role.</p> <p>D. Planning participants: 1. The licensee shall invite, delegate the responsibility for inviting, at least the following persons to participate in development of the service plan and periodic review: a. representative of the facility b. a representative of the child placing agency, if applicable c. the child, if the child's presence is developmentally appropriate, and d. the child's parent or guardian</p> <p>2. At least one participant on the service team shall have the qualifications listed in R21-7-324.</p> <p>E. Methods of Participation: The licensee shall allow service team members to participate in service planning through the following methods: 1. Attendance at a planning meeting 2. Submission of a written report or documentation 3. Review and approval of the plan through signing and dating, or 4. Audio or audio-visual teleconference</p>	<p>Agencies that are private placement, while implementing service plans, do so in cooperation with the parents and child, not with social workers, mental health providers etc. As a result, signatures of all persons involved in the service plan, the inclusion of all planning participants and the methods of participation are unnecessary.</p>

<p>R21-7-334 Discharge; Discharge Summary</p>	<p>B. Discharge Summary</p> <ol style="list-style-type: none"> 3. A summary of the contacts between the licensee and the facility or person to whom the child was discharged about the child's pending discharge. 4. A summary of services provided during care 5. A list of medication provided during care, with a summary of the reasons for prescribing the medication and outcomes of the medication; 6. A summary of progress toward service plan goals; 7. An assessment of the child's unmet needs and alternative services that might meet those needs 8. Any after care plan and identification of any person or child placing agency responsible for follow-up services and after-care; 	<p>Exemption requested.</p> <p>All children placed in a private placement agency are done so by the guardians of the child. All of this information is contained in the child's file and can be made available to either the child or their family upon request and permission of the child. This information on the discharge summary is unnecessary when the information is available through these means and would only be requested by the family and not a placing agency.</p>
<p>R21-7-338 Nutrition, Menus and Food Service</p>	<p>C. A registered nutritionist or dietician shall either prepare or approve the licensee's menus. The licensee shall maintain a record of any approvals for one year, and keep the record in a central location at the agency or facility.</p>	<p>General Change requested – not exemption. I propose that this should read "staff with nutritional and dietary certification" as opposed to 'registered'. This is a lower and more easily met standard as almost all agencies have employees that have received food handler education and/or food safety basic education which should satisfy this requirement and ensure food safety for children.</p>
<p>R21-7-351 Medical and Health Care</p>	<p>B. Medical Care</p> <ol style="list-style-type: none"> 1. A licensee shall arrange for a licensed medical professional to give a child a medical examination within one week of the child's admission to ensure that any urgent healthcare (including dental, behavioral, visual or medical) needs are identified and addressed. 2. Follow the Early and Periodic Screening, Diagnostic and Treatment (EPSDT) schedule of well-child visits for children from birth to two years; the EPSDT schedule for young children includes 10 well-child visits within the first two years. 3. A licensee shall arrange for a child in care over the age of 2 years to receive at least an annual medical exam consistent with an EPSDT or well-child exam from a licensed medical professional. The results of these exams may be used for a child participating in sports. 4. The initial EPSDT/well care medical examinations shall include: <ol style="list-style-type: none"> a. complete health history & physical exam b. developmental & behavioral health screening 	<p>Exemption Requested.</p> <p>In private placement agencies, parents retain all guardianship and responsibility for all routine medical exams. Emergency medical / psychiatric services are rendered through local emergency rooms and Mental Health Assessment Teams.</p> <p>Parents should be required to provide private placement agencies with a medical exam report upon intake. This exam should have been completed within 72 hours prior to intake/admission.</p> <p>Any important psychiatric reports should be requested and provided by parents at time of intake / admission.</p> <p>Dental exam reports should not be required at intake.</p>

	<p>c. growth and nutrition check d. all medically necessary immunizations e. vision and hearing tests f. eyeglasses, hearing aides g. dental care h. blood and urine tests i. follow up and referral of any medically-necessary healthcare services</p> <p>C. Dental Care</p> <ol style="list-style-type: none"> 1. A licensee shall arrange for each child to have a dental examination within 30 days of admission 2. Dental care begins by the age of one (1) year Routine prevention visits for children and youth need to occur every six months 3. A licensee shall arrange for each child age one year and older to receive a dental examination every six months. 4. In cooperation with the child's placing agency or person, a licensee shall arrange for a child to receive any prescribed dental care. <p>D. Behavioral Health care:</p> <ol style="list-style-type: none"> 1. The licensee shall ensure that behavioral health services begin within 72 hours of removal through the Behavioral Health System, Rapid/Urgent Response process. 2. The licensee shall ensure a child available for any follow-up appointments or care within seven days of a child's Rapid Urgent Response. 3. The licensee shall ensure that they have the after-hours contact information for a child's behavioral health provider to communicate routine and emergent issues and have a procedure for contacting emergency behavioral health services. 4. The licensee shall ensure that all scheduled behavioral health related appointments are kept and that a child receives psychiatric evaluations, medication and therapy session as prescribed: 5. Child Welfare Agency staff shall make themselves available to attend Child and Family team meetings and participation in the Child and Family Team meeting process. 	<p>EPSDT should not be required by private placements agencies if the above is required from parents.</p>
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<p>R21-7-348 Behavior Management</p>	<p>12. Denial of a child's visitation or communication with the child's birth family members or with a significant person when such denial is not approved by the case manager or the case manager's supervisor.</p>	<p>Exemption requested. In private placement agencies, we are not working with case managers. This is addressed in R21-7-R21-7-340 4b</p>
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Senseman, Carrie

From: Johnson, Joy
Sent: Tuesday, September 22, 2015 7:59 AM
To: Senseman, Carrie
Cc: Robinson, James (Jamie)
Subject: FW: As requested - proposed exemptions for non-contracted, private placement agencies
Attachments: Proposed Exceptions to Title 21 Chapter 7 Article 3.docx

Hi Carrie,

Jamie asked me to forward this to you.

Thank you,

Joy

From: Tori Ferrari [mailto:tori@tcaz.org]
Sent: Tuesday, September 22, 2015 12:47 AM
To: Johnson, Joy
Subject: As requested - proposed exemptions for non-contracted, private placement agencies

Dear Joy -

Thank you to you and your fellow OLR staff for the Public Hearing on the proposed changes to the OLR regulations in Tucson. I appreciated the format and the opportunity to learn more about the broad scope of your office. It is easy to get so focused on the work that we do on a daily basis that we fail to see how many are out there doing amazing work to help children and their families.

As Jamie requested, I am attaching the outline of proposed exemptions for agencies that are neither funded nor receive placement from the State of Arizona. Please let me know if you or Jamie have any questions on this submission. I truly appreciate the regulations as I stated in the hearing. They allow us the opportunity to continue our program with excellence, however, many of the regulations assume the partnership between case workers, placing agencies, etc which do not apply to our agency, or others that are not contracted...

Thank you for your time. Please let me know that you have received this email. Could you also send me Jamie's email so I can forward it to him as well?

Thank you. I look forward to working with you!

Dr. Tori Ferrari

Center Director - Springboard Home for Youth in Crisis
Teen Challenge of Arizona, Inc.

NOTICE: This e-mail (and any attachments) may contain PRIVILEGED OR CONFIDENTIAL information and is intended only for the use of the specific individual(s) to whom it is addressed. It may contain information that is privileged and confidential under state and federal law. This information may be used or disclosed only in accordance with law, and you may be subject to penalties under law for improper use or further disclosure of the information in this e-mail and its attachments. If you have received this e-mail in error, please immediately notify the person named above by reply e-mail, and then delete the original e-mail. Thank you.



Douglas A. Ducey

Gregory McKay

Governor

Director

REQUESTING FEEDBACK

The Department of Child Safety was granted rulemaking authority under A.R.S. § 8-453(A)(5), and an 18-month exemption from the rulemaking requirements of Title 41, Chapter 6 under Arizona Laws 2014, Second Special Session, Chapter 1, Section 158 (Senate Bill 1001).

The law requires the Department to post all drafts of its administrative rules to the Department website for a minimum of 30 days, for an opportunity for the public to provide written comments. In addition, at least 2 public hearings must be held prior to the filing of the final rules.

THE DEPARTMENT IS ACCEPTING PUBLIC COMMENT UNTIL SEPTEMBER 23, 2015 ON THE FOLLOWING DRAFT RULES:

Chapter 7, Article 1, Definitions

Chapter 7, Article 2, Child Placement Agency Licensing

Chapter 7, Article 2, Licensing Process and Licensing Requirements for Child Welfare Agencies Operating Residential Group Care Facilities and Outdoor Experience Programs

Chapter 9, Article 1, Definitions

Chapter 9, Article 2, Adoption Agency Licensing

These draft rules are posted at <https://dcs.az.gov/about/dcs-rules-rulemaking> Each online draft is accompanied by a survey.

3 WAYS TO COMMENT

1. To comment online, complete the survey and submit.
2. Comments can also be sent by mail to

Name: Carrie Senseman, Lead Rules Analyst
Address: Department of Child Safety
P.O. Box 6030, Site Code C010-23
Phoenix, Arizona 85005-6030
(Comments must be postmarked by September 23, 2015.)

3. Public meetings on the draft rules will be held:

Monday, September 21, 2015
Joel Valdez Main Library
101 N. Stone Avenue
Tucson, Arizona 85701
5pm - 7pm

Tuesday, September 22, 2015
Arizona Bridge to Independent Living
Disability Empowerment Center
5025 E. Washington Street
Phoenix, AZ 85034
5pm - 7pm

①

- Phoenix -

9/22/15

Donald McGrath
Achieve Services

21-7-301

Gov. Body sect. 6?

Not clearly stated if you need one -
needs to address profit / non-profit -
old rules have good distinction

for profit - should have direct Authority
7425(A) bring over to new rule -
Autonomy

21-7-307 Add'l Facilities

unrec prohibited

esp. orgs w/in 1st year

Newer orgs. w/in past year grandfather in -
Licensed

Apply to new organizations -

②

CARA HAWKINS
Sunshine Residential Homes

21-7-307 Lic AM.

ⓐ No open DCs licensed in U. pending
ⓑ No Lic complaints / concerns -

If org needs to expand -
challenging for expansion

Complaint from who?
STAFF
If Agency took action

STAFF MATRIX:

Supply complete at renewal
LCRS → monthly should suffice

312

ⓐ ② Finds comp. is valid
unintentionally / knowingly did something -
CORR. ACTION should

314 c

knowingly
=

320* challenges for info. NOT easy

3

Barney Deolph

700 PA. 17,000 people?

balancing act? standards
overly prescriptive / restrictive -
long & lasting consequences -

Gov. Boards

role confusion

interchangeably CWA, CPA, PA used -

what belongs to foster home lic. Agency -

never have custody.

statutory change may be needed.

4

Sally Jones
- HRET -

1980s C.P. Agency
NO OTHER PLACE TO PUT US.
MAKE THINGS RIGHT.

Foster Hm. Lic. Agencies 7 EP'S -
Records, CASE PLAN -

205 def lic worker, supervisor,
licensee -

205 (D) PLACING SERVICES PUT HERE -
NO ONE WHO DOES PLACEMENT -

Distinguish btwn. for & non-profit.

CWA employees should be on A Board.
20% emp. of Agency -
" CWA Agency -

5

Deb O'Kane
Mother Goose

232 D-

or private insurance on adoptive parents -

219 D(7).

change of ownership if non-profit is
irrelevant don't have to be a non-profit.

201A 1-3

who performs adoption

* AZ Adoption Agency -

6

Room

All Methods of Compliance

pls. review + put BACK INTO PLACE -

we have a few of these

it impacts operations -

④

PAUL MCKERTON

- rt. of passage -

21-7-102 training - RPPS

parent standardized?

STAFF

\$ COST?

- 325

trauma informed care
standardized curriculum?

Sleeping Arrangements

7339

e (i)(c) - does not exist in new role

7353 - safety railings if dev. appropriate
what constitutes dev. app?

8

MCGRATH

Clarity:

Deny, Suspend -

"leniently" should be added -

314(c)

→ Add to #1, #2, #3 -

Child Staff Ratios

Clarity ratios:

6-11

How does this impact recent contractual inquiries for younger children -

7-330!

Ad. + Intake

refill Rx; Det. Need -

reflect if need has been prior to placing

Approved -

already been done no need for twice -

Deny: 4, 5, 6, 7

Dismiss employee. Org. have opp. And not face consequences -

9

Lea Benson
Street Light USA :

p.15 Item D?

15 days → STAFF INFO, SS#s etc.
encrypted INFO w/ private INFO.

Day or Night Invo / on-site visits
Do not have the STAFF ON shifts -

1/3 Annual Gov Body. renewals

- BYLAWS -

one renewal allowed → 6 years -

" knowingly / willingly hires someone - "
(some STAFF have been sex trafficked
) may deny, susp, revoke etc.

10

DAWN Teo:
F.C. RIGHTS Coalition -

- A lot of things -
- Submit revisions → grp. home rules -
- disappointed worst put together -
- Not the right people
- Lack of care, not proof need -

Quality of Care?
Should be same as foster home -
lower ↓ in group home -
standards too low on one side -
strengthened -

Medical + BH req -
pull apart's RIE, TCH, group hm, rules -
"depends"
Let's home to what they want -
normalcy need to give that to them.

≠ reg business practices
Need to meet Boards

(11)

else Brockman

easier than Article 74:

349: Body Searched -
cell phones -
private videos

Add'l fac -

No lic concerns w/in last 4 mo.
Some inv. are still open on Lic.

303 -

expense: 60 DAYS -
cost-prohibitive too long.

Transfers: only owner of home -
keep home open, bring on a partner -
my kids - pass it down.

12

Meghan Amigo CAA:

PACKET:

- RPPS - go further to incorporate normalcy -

Dist. btwn. the levels of care -
\$, hygiene products.
sep. town APART this section

328: Runaways

P Sex Traff. - rule

Questioned AT INTAKE

Include Recomm.

Look at Fed. req. So measures are being taken - nec.

- 301 Bureaucratic

- 324 How they do their business ex: CFO -
staffed for smaller homes.

maybe in spec. contracts
need to help kids thrive.

13

ERA Hawkins

326! Notifications

(C 1, 2, 4, 5

CW's showing docs to family members?

) remove Address - specific -

CAN req.

318 (D)

Intake Assessment Criteria C
provider HAS ACCESS to this info.

Does NOT

do best to complete this info.

a) At the time of INTAKE -

330 (F) em. Admissions

Keep all em. Admissions -
on hand requested

14

JOHN O'Neil:

We want to provide quality care -
partnering to raise standards of homes.

IN STATE care ↑ up.

What comm to people?

What point will this be (in effect) -

When compliance -

Finalizing:

Compliance -

Six children -

please revisit, new business -

difficult - consider five:

good starting point before getting into
higher numbers -

15

BAHNEY DepolpH:
HAVE WRITTEN COMMENTS :

- Gov. Boards -

- ① Hire / Fire CEOs
- ② Fiduciary
- ③ Set policy

should be done by STAFF -
review by someone w/ expertise -

editing issues

→ works in a F.C. Lic Agency @
Lic sp. caseworker definitions :
() these are NOT the same for FHLs + CWAs.

HAVE def. suggestions -
experience changes - BACKGROUND -
welfare shorages

16

Dawn Teo :

Gov. Boards :

Reflect make-up of pop. that you serve —
CAN'T restrict their board make-up/composition —
Fundraising is needed —

Did not ~~know~~ know how business works —
Who wrote rules —

standards created by homes — should
also govern DCS.

Dev.
policies

Next person — Do you want to have them do
what they want

they have
Belongings — no control —

STANDARD? UNUSUAL incident reports —

AWOL → DCS responsibility —

17

Ken Pedia :

step

C-corp

Scorp

Board of Composition :

Old rules → can participate on Board—
new ones say, ANYONE who earns
money can't be part of Board.

Dont want to be a S-CORP

18

proof of finding - what it includes -

contradicts or application -

would like clarification -

19

DEB O'KANE ?
Mother Goose -

Degree Requirement ?
qualify to be a cashier
if supervised should be enough w/ Bach, MASTERS

20

Meghan :

Stakeholder meeting for FHC :
Same process be followed -
Next process steps -

(21)

Simon Codosi
Sunshine?

- CONTRACTS
- Licensing
- DCS

Gov. Board

20 years ago

I WANT to be there -

We will be limited - future -

22

phoenix 7/22

CMA Hawkins

331: 1-8

Ref tool:

submit annually of IX on when A Δ.

Discharge Summary

13 2

planned, Actual

→ of few only see this -

9 Don't have same info. DCS has.

334: BH 72 hrs. DCS controls
pic shall work w/ DCS

352(c)(9) Sell-By ^{EX:} frozen meat -
exp. DATE

(c)(10) looks at ref. freezer
meets safety

Food issued - handling issues -

737-11 H₂O temps; At or below 1000-
WANT A RANGE for temps.

23

Bahney

7-101 - F.C. & define?

63 out-of-home
legal custody / physical?

71 P.A.
Define foster home here?
FHAS Don't fit.

sig. person - kinship foster kinship -

102 - initial app. packages?
unclear if these apply to whom?

if applicable could add?

Gov. Body 106
they don't match w/ ch. 2

21-7-205 exclusion from membership
expertise on Board is needed -
in field
should be 20% w/ an id org.

24

polices :

op. manual

205: Consultants :
= FHL don't need.

Don't apply to FHLs.

25

Dawn Teo?

* Legal team Title 21?

All other Attorneys said that above who passed w/ Ben wrote these -

Conflicts w/ STARUCO
specific types of lawyers
insurance, employment -

Joint-employer - liability to STARUCO -
Court polling STARUCO members -

Limiting access? legislated -

Bad rules will stay bad rules -
CAL or Attorney don't have time to say that
you are proceeding ~~APR~~ meet.

organized global definitions / not organized?
are consistent?

When you try to regulate outside your
expertise -

GAS CIVIL CP.

20

Caught problem?
ch. 108 looked at it & they found it.

All kinds of expertise -

sm. grp. of people - please get together -

(27)

EA Benson

AWOLS? Need to Add?
STAFF left w/ child out of ratios?
LAW enf. both UNDERSTAND rules

Gov. Sex Trafficking Committee
CONTACT so there are not dis connects

Vol. STAFF - lost 200 volunteers -
who needs to be fingerprinted
CPR, physicals
Need clarifications ON STAFF/ Vol.
of requirements

Searches

Need to monitor after passes -
Need to search belongings -
CAN'T use metal detectors
Drug screens - when?
Sniff dogs - reasonable cause -
we should do that -

(28)

MAKENZIE TEO:

ADOPTED LAST NOV.

8/27 PLACEMENTS IN GROUP HOMES -
GOOD HOME VS. POOR HOME -

RULES FOR GROUP HOMES HAVE NOT BEEN IN ONE -
WE FEEL HELPLESS -

FEW INSPIRE SAFETY + SECURITY -

TELEPHONE CALLS - INVESTIGATIONS
THEY SHOULD COME OUT TO SEE WHAT IS
HAPPENING.

RESTRICTIONS & WASN'T FIT FOR A FAMILY, DIDN'T WANT
TO LET GO CONTROL -

TEAR APART AND REVIEWED DON'T KNOW IF THEY
WILL EVER END THE CORRUPTION I HAVE
SEEN.

29

Speak from my heart -
change can produce something fantastic -
New + just starting AND
Been in this a long time -

Quib. of people - Gov. Body,

Can we have some of you were me?

Can't start a business - too restrictive -

I get calls everyday from afternoons - we
Dont have any openings.

I am the needle - have to have all these things
in place - can't do it, there will be -

Gotta come out + check - regulate -
Wk together!

Standard way apps, submitted - need to
come up with one.

30

Alicia Condova ?
Lowan Bridge -

New ?

family style AWA ?

restrictive if ↑ 5 children -
multiple homes

Don't want to be forced into a FC family.

still offer as model; same STAFF.

Gov. Body

passionate owners care productive -

When children age at
Cemo → 1 year 7E307

SATellite ? FC.

open investigations on every home -
A wise this should not stop the opening
of a new facility.

(31)

Cynne Blewins: - Happy Acres

Amo

12 yrs.

Deshe - family home - not staff shifts -
Don't want to run it like this.
CEO, Gov. Body
ties an hour
We are not-profit.

By-laws: every 5 years:

We want to run the business like we want
to, need help - but we don't lock our
food.

We lock-up on meals.

no hrs. rapid response - BH,
Cm makes that happen.

(32)

- TERESA MALONE -

IN - PROCESS OF LICENSE - NEW TO THIS -

INSTITUTIONS -

WE WANT FAMILY ATMOSPHERE -

33

Tiffany Hill!

Adoption Attorney:

1) 21-9-229!

written agreement w/ birth parents -
illegal in AZ

rewrite rule please -
make it live

CAN'T DO + AZ LAW -

2) 232-

AHCCCS - PAYMENTS

gov. all adoptions

rewritten please

inter-state or AZ state

CAN provide:

NAMES to

rewrite

this rule

suppms → revisits on FOST Commission -

Ripartano get rules in place -

rewrite

Questions for years to come -

34

DAWNTEO

OVERALL

Focus on wrong things

control ops, businesses -

graphm Dh. looked over university based in both
ethics -

• manipulate safety precautions

• prevent a good group home that used a family-like

Atmosphere →

She had a good group home?

Go together, ate together - help her to be in
A family.

Look at Big pierre, holistically

Do these things make the life of a child.

graphing - show time to finish.

Kids can help -

allow personal

pride

earn together -

35

Revia MCRAY
Revia's PLACE?

Siblings?

1 YR.

How are these A's Advantages for the children?

mid. sec from 5 to 6. concerned
the sprinklers

Gov. Bid.

How Advantages for children?

Insurance Coverage: STATE CONTRACTS?
Lic but not A contract how affect them?

TAKE A moment to receive what you heard

tonight -

Come visit -

my children / my clients are their choice -

pls take into consideration - what is best
for children?

36

Holly Rivers ?

Submitting Applications

Proof of Income ?
How Done ? ✓

CC - card Advances ?

Give of credit -



Douglas A. Ducey

Gregory McKay

Governor

Director

REQUESTING FEEDBACK

The Department of Child Safety was granted rulemaking authority under A.R.S. § 8-453(A)(5), and an 18-month exemption from the rulemaking requirements of Title 41, Chapter 6 under Arizona Laws 2014, Second Special Session, Chapter 1, Section 158 (Senate Bill 1001).

The law requires the Department to post all drafts of its administrative rules to the Department website for a minimum of 30 days, for an opportunity for the public to provide written comments. In addition, at least 2 public hearings must be held prior to the filing of the final rules.

THE DEPARTMENT IS ACCEPTING PUBLIC COMMENT UNTIL SEPTEMBER 23, 2015 ON THE FOLLOWING DRAFT RULES:

Chapter 7, Article 1, Definitions

Chapter 7, Article 2, Child Placement Agency Licensing

Chapter 7, Article 2, Licensing Process and Licensing Requirements for Child Welfare Agencies Operating Residential Group Care Facilities and Outdoor Experience Programs

Chapter 9, Article 1, Definitions

Chapter 9, Article 2, Adoption Agency Licensing

These draft rules are posted at <https://dcs.az.gov/about/dcs-rules-rulemaking> Each online draft is accompanied by a survey.

3 WAYS TO COMMENT

1. To comment online, complete the survey and submit.
2. Comments can also be sent by mail to

Name: Carrie Senseman, Lead Rules Analyst

Address: Department of Child Safety

P.O. Box 6030, Site Code C010-23

Phoenix, Arizona 85005-6030

(Comments must be postmarked by September 23, 2015.)

3. Public meetings on the draft rules will be held:

Monday, September 21, 2015

Joel Valdez Main Library

101 N. Stone Avenue

Tucson, Arizona 85701

5pm – 7pm

Tuesday, September 22, 2015

Arizona Bridge to Independent Living

Disability Empowerment Center

5025 E. Washington Street

Phoenix, AZ 85034

5pm – 7pm

1

TUCSON
9/21/15

LYNN LeCLEAR TURNER

F_oC_o RIGHTS COALITION -

Rewriting rules, cannot accomplish what these
rules deserve -

MC Rules took 3 years -

NOW NATIONALLY KNOWN. → MARICOPA MODEL.

STARTED FROM SCRATCH

BAD RULES WORSE THAN BAD STATUTES.

They are not challenged in court.

WRITTEN W/ NO OVERSIGHT W/O LEGAL TEAM -

Cross-reporting rule - DO NOT UNDERSTAND.

Should not ACCEPT changes the rules -

CAN'T TACKLE EVERY BAD RULE -

Worried about what we don't catch -

EXEMPTION NOT A GOOD EXCUSE. IN SHORT TIME

FRAME - DCS CANNOT AFFORD ANOTHER

FAILURE.

②

9/21/15

Don Schwab Family Services

our - difficult task?

No Basic objectives

Better Articulation of the following?

Combining Programs / Combine

What are you trying to get at?

own property

① Children's Village

② Family Journey

These are not combined pops do not mix - except have allowed children in custody to seek reunification with a single mother - just heard of a successful case today - this is a conflict

w/ our work/program -

success in 20 years - \$ received to build single mom housing -

We would look to help - from OLE.

Separate addresses - mother and child.

③

9/21/15

Noel Robinson

Agree w/ Lyn's statement -
concerned w/ AZ child welfare
excellent people / PAST Directors
when tie their hands - legislatively -
Ask Gov. Ducey for more time to do this
effectively -
look at other states rules + laws -

For Self-ID as homosexual (son).

Place clearly in rules -

That if AN Adolescent says this -
that they should not mix pops -
charged (Class 2 Felony) -
behind closed doors. dangerously
We told everyone about it.

Internet Access:

Concerns about this - my son had 5
aliases, posting inappropriate material -
CWA gave him access to internet -
must be housed separately.

④

Tori FAR

Team Challenge:

Help us excel -

entirely privately funded -

parents assumed guardianship -

rules - placement by state -

unique: exceptions

for private funding + placement

ex: CEO PART OF Gov. Body

considerations -

- parallel regulations

- can't comply w/ caseworker's - requirements

5

Alicia

Children's Village:

(Other states professional F.I.C.
I have to be licensed as a group home.
) propose AZ have this.

went from being an ally to being a
now frustrated to be treated worse than
children's bio parents
Corp. Homes are not the problem.
8 years of a good record -
Why treated this way?
We have success stories -
Automatically dismissed -
Levels of care →
licensed for 5 children.
STAFF → community
10 indiv. homes on property -
Others on property can be helped.
We have well-trained support staff.

6

PAULA

of: old pueblo children's services

Don't want to speak out -

K NOW A LOT of Audience members -
CIET'S & TEAMS

kids are the same -

Changed over the PAST 20 years -

WEDS activities w/ the children

INVESTIGATIONS out / open for over a
year

We are ACCOUNTABLE for the kids -
where is the balance?

INV. 3 hours interrogating on a SAT. AM.

We are not included in decision-making
Committee - years ago for better intake

fun on kids - Don't know what happened -

"them & us" not productive -

They don't go quick (investigations)

where does it stop -

We take tough kids -

kids Almost Adults - that were still and
on the placement list since 3 or 4 years
old.

7

TUCSON
9/21/15

JANE DEMAR

CASA De Mar CARE

Geared toward more corporate companies
larger organizations?

Not cost effective for the State -
Gov. Boards, other go. professionals -

my perspective: org. that is self ruling
comes into provider eye - ~~strategic~~
strategic planning - consider + talk to
stakeholders - personally wants A's -
Accountability needed -
Your side understand - Separate sides
OIL VS. CONTRACTS -
We weren't able to have a process -
We are expected to do this -
lic standards + what's best for kids -
suggest: if moving too quickly - extend the
opportunity of rule making process
lots of processes -> take one year.
This is surprising to me -

8

PAM
GAP MINISTRIES

Structure of Board

2/72

Exon / board - policies + PROC.

*, networking, giving me goals -

Board doesn't want to know about the cases
(in detail)

CFD: CAN'T FIND, CAN'T PAY -

Family model - rates are lower -

CAN'T DO NIGHT STAFFING -

RATES SET TO OCT. 2018

Inv. feel like eliminatals -

Should we eliminate employee because you say to?

Just

Not if but when you get investigated -

Fix-ups to homes needed: sprinklers,
handicap bathrooms -

Didn't grandfather us in

Changes by county - requirements

9

Sheldon :
Chickens Academy

7102

11 A+B
Will OCS provide that training -
Where + when ? How many can I bring ?

Jaime : train the trainer on your staff.
At an cost

7235

4. TRAUMA INFORMED CARE TRAINING -
OCS'S OF OUR OWN ?

Jaime : WANT TO DO THIS IN A SIMILAR
FASHION. (train the trainer).

7353

sleeping area / furnishings
railings - dev. appropriate -
What does this mean ?

10

Stephanie Potts -

21-9-214A4-

17 yrs. in Adoption field -

Apply: 5 years of experience -

I would not want to be excluded from

Applying by using my foster care experience -

B(4).

may not hire w/o A Central Registry
check →

* Probable cause:

was not clear here:

current regs: not invest into

remaining information

VAST discretion

Taking out →

Diff. levels of skills -

13 FINDINGS

23 Probable cause - (definitions).

Applications for employment -

Standard of proof lowering

Gamble of my career

11

HAD good experience -
Reunification occurred -
Fellow FPI's been investigated -
not good experience -

less experienced investigation could place me
At risk - my career - parents won't
foster - if you lower standards -

12

- Noel -

We All have a tricky way of assessing
cost - not do it for the money.

Bus + Gov.

↳ balancing reality? What matters most -
makes us afraid -

not a healthy environment.

CWs, F.P's, Group homes staff all time to
read regulations -

What matters most in the safety + well-
being of the kids -

We have a 3 bedrooms, but stopped doing
it.

overregulation doesn't work for the kids -
you, or us.

even w/ all the wonderful people I have
worked with, still a mess-up system.

13

Lyn McClair

43 children + 12 yrs.

-353 furnishings -

why are held to same standards -

ex: top-sheet on bed -

group homes are same requirements -

357- Gen. Safety (E).

GAS APPLIANCES

③ - disconnect gas lines - caps,
grp. home would explode :

Coalition will produce revisions tomorrow
in phoenix if these rules will be
Adopted.

14

* Stephanie & Potts?

to comment online, one opportunity —
on survey monkey.

15

Sheldon King

Sycamore

7339-C(4)

NO ECI(c) - MISSING -

(16)

New licensees

vs.

Renewals

Gov. Bodies + CFO'S.

grace period → vs. grandfathering —

(17)

Finished + Surfaces →

LEAD PAINT:

children ↓ to 4 yrs. on DD ↓

contradictory
pan grammar -

NOT ^{the} SAME: BH in Gnp. House
FH. Gnp. Homes -

-321 (E)

"shall" NOT AS heavy AS "must".
in many rules

308 (A)(1)

strange P.

OLL does not need to notify licensee of
expiration -

CAN OLL send notification? please?

CEOs, & Fin. officers,
not on their Boards -

308: STAFF INFO.

when had last

if office staff - bookkeeper: last physical?

(18)

BIG Statement OF Purpose ?

STATEMENTS OF child's RIGHTS -

should have same rights no matter what
grp. home they are in -

- Accurate records

gen Acceptable Accounting principles
+ this chapter

What does this mean ?

19

Greg Aigs
GAP ministries —

Significant changes to our Board —
is required —

By-LAWS

we do other stuff —

structure

only a portion of what we do.

Are: overstep your lines of Authority —

(20)

9-224

physical licensing 700

(A)

public setting broad term.

We gave families the option of where to
meet support choice -

PLEASE explain -

Adoption fees:

Adoption reasonable fees for services -
NAUVE - LANGUAGE.

(21)

lyn

301 (B) - (2)

minimum capacity: AS written →
should be maximum.

ARS

(D) 8-520

misdemeanor: language -

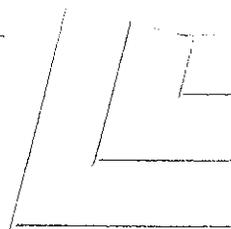
Central Registry check: STAFF -
"shall" / language is unclear -

(J) (2)(C): shall include 3 items:
doesn't like "equipped to serve" -
A geographical area.

302? Orientation -

(e) school district letter -

OUR is trying to regulate gap homes
impossible to get this letter.



22

Coaching & Mentoring provided?

Jaimie: yes, we will.

(We interpret the rules.) -OLP

Training would be great.

(23)

Stephanie Potts :

9-232 AHCCCS reimbursement

This is confusing -

★ cite statute here

Bio-parent w/ AHCCCS, why
reimbursed by bio-parent?

24

9/21/15

- Lynn -
305 - Lic decisions -

- ③ 1.0
- 2.0
- 3.0

OR ?

307: (2)(e).

Language: re-worded

B Add'l. Faculty:

"in AZ" remove -

Other state exp. should be allowed -

Our schedule life safety resp -

NO ASSOC. timelines

UNfair to Applicants

should have expectations of when those are going to happen.

BOB: Renewal →

(d) (1)(b)

Why does our need to know the relationship of an applicant to the staff?

② position or title

summary of that position's job description.

25

309(2):

Emergency - no timeline:

(B) no timeline

(C) - 303 -

may interview: — | — | — |

should say must "shall" every ind.
at a F.P. if AIT interviewed - should have
same req. for Group Homes.

- 312 - (C).

WANT: NO telephone CONTACT - Allowed,
too easy to resolve.

- 313 - (3).

Corrective Action PLAN:

↳ ADD "corrective ACTION"

more specifics about TRAINING -

314 - DENIAL, etc.

SAYS (may) WANT "shall".

(B) ↳ " "

(26)

316 - STATEMENT OF PURPOSE:
Apply the FED. MANDATE / fix language^s
to NOEMALAY;
Add^s REASONABLE + prudent parenting
STANDARD -

316 - " "

(G) Can't be the child's choice?
Gov. Hm. be held to this
STANDARD -

27 Stephanie Potts @

-205 (c)(2)(C)

DEPT. MAY ISSUE A license - reasonable fee - AGAIN confusing

jeopardize well-being of A client

violates ICWA - what does this mean?
we have 2 native American children.
voluntary Adoptions - EXIST.

wise to ASK for an extension -
pull together proff. from these ADEAS
from level of detail →

public comments not held for
these other rules. closed on website.

DID NOT give access, & not comment
ON ADE to comment - ON WEB-SITE.

confusing + disappointing -

	A	B	C	D
1	Rule(s)	Topic(s)		Notes
2	R21-7-106, R21-7-205, R21-7-301(G)	Governing Body		
3	Current Rule - R6-5-7424	A licensee shall have a governing body to oversee the operations, policies, and practices of the agency and its facilities. The governing body shall be: 1. The board of directors for an agency that is a non-profit corporation, or 2. The board of directors or individual owner of an agency that is a for-profit organization. Lists duties of the governing body: (ensure licensee provides the services described in the licensee's statement of purpose, adopt an annual budget, approve annual financial audit report, establish a policy and procedure for retention of staff, procedures for the selection of governing body members and CEO, etc.		
4	Proposed Rule Posted on 8/18/2015	R21-1-107- Minimum five individuals, comprised of various areas of professional expertise, shall not be related to the executive director, CFO, program director or licensee. Tasks of governing body include those in R6-5-7424. R21-7-301: Describes responsibilities, (formulate plans and policies, keep informed and refrain from direct administration of operation of CWA except in emergencies.) Composition, reporting changes in composition to OLR, when to replace an inactive member, and exclusions from governing body membership (management and staff)		
5	Public Hearings	We do not accept any government funds, why should this apply to our organization? Our Board is comprised differently, we would need to change our by-laws, this is only a portion of what we do.		
6	On-line	This should be a recommended not required for smaller agencies. For 1/3 of the board changing annually, we would need to re-write our by-laws Not every board member is an AZ resident. We have employees and founders on our board. We have our CEO and founder on our board. This does not make sense if an organization has only seven or eight employees and is a sole-proprietorship or single member LLC.		
7	CAA			
8	FIRST	governing body works or how it is comprised. Removes list of duties of the governing board. Boards have fiduciary and fundraising roles; and duty of care (organizational planning and decision-making , duty of loyalty (acting on behalf of the organization), and duty of obedience (ensure the organization complies w/ all laws and regulations and remains committed to its established mission.) Removed composition rules for the governing body and the criteria for members, such as areas of expertise, and employees of the placing agency.		
9	TEEN CHALLENGE	Our CEO is required to be part of the Board of Directors.		
10	OTHER			
11	ACHSP	Requirements in Article 1 do not match Article 2. Governing Boards do not develop criteria and procedures for staff; they approve documents such as annual budget quality management policy or a QI program, they do not write or adopt these documents. R21-7-205 - Excluding those who work in the child welfare field from Board membership unnecessarily limits the expertise of the Board. We agree that in most cases staff working at the licensed agency, should not serve on the Board, there should be allowed a provision for not more than 20% of the Board members be working in child welfare.		

	A	B	C	D
12				
13	Rule(s)	Topic(s)		Notes
14	R21-7-324	Requirements for a Chief Financial Officer (CFO)		
15	Current Rule - R6-5-7425	A licensee shall have an annual, fiscal year-end, financial audit by an independent certified public accountant who shall conduct the audit in accordance with generally accepted auditing standards.		
16	Proposed Rule Posted on 8/18/2015	A licensee shall have a Chief Financial Officer for the agency; responsible for financial management, administration, and operation of the agency under this Article. Education, experience and duties are listed.		
17	Public Hearings	We cannot afford a CFO.		
18	On-Line	Financial burden on small operators to pay a CFO. The use of a bookkeeper and/or CPA firm should suffice.		
19	CAA			
20	FIRST	Removes requirement for an organization's Operational Manual that includes policies and procedures) that is to be available to OLR. (R21-7-205(A)(5).		
21	OTHER			
22	ACHSP			
23	Rule(s)	Topic(s)		
24	R21-7-101(79)	Definition of "Residential Group Care Facility"; Licensed to receive more than five children.		
25	Current Rule R6-5-7401(25)	<p>25. "Facility" or "residential group care facility" means a living environment operated by a child welfare agency, where children are in the care of adults unrelated to the children, 24 hours per day.</p> <p>a. "Facility" does not include a program licensed as a behavioral health service agency by the Department of Health Services under A.R.S. § 36-405 and 9 A.A.C. 20.</p> <p>b. "Facility" does include an outdoor experience program.</p> <p>c. When used in reference to an outdoor experience program, "facility" means the campsite at which or the mobile equipment in which children are housed.</p>		

	A	B	C	D
26	Proposed Rule Posted on 8/18/2015	Residential group care facility” means a Child Welfare Agency that is licensed to receive more than five children for 24-hour social, emotional, or educational supervised care and maintenance at the request of a child, child placing agency, law enforcement agency, parent, guardian, or court. A residential group care facility provides care in a residential setting for children for an extended period of time.		
27	Public Hearings	We would need to fix-up our homes for fire sprinklers, handicap bathrooms, we were not grandfathered in. If a child needs that level of care, a more restrictive placement should be considered. I would add accommodations for different groups of group home facilities. Please add a better distinction between family-style group homes and larger group homes.		
28	Public/On-Line	There are zoning changes when the number of children goes up to six or more instead of five. Keep the minimum to five.		
29	CAA			
30	FIRST			
31	ACHSP			
32	OTHER			
33				
34	R21-7-329	Staff Awake During all Hours		
35	Current Rule: R6-5-7437	A licensee shall have at least the paid staff to child ratios prescribed in this subsection. Age 12 and above:, age 6-11, age 3-5 - At least one paid staff member in each building where children in care are sleeping. Under age 3 - At least one paid staff member for each six children when children are sleeping. Young adults, at east one staff member for each 20 young adults. Nonambulatory children under the age of 6: At least one paid staff member for each four children at all times.		
36	Proposed Rule Posted on 8/18/2015	Age 12 and above, ages 6-11, , ages 3-5,: At least one paid staff member in each building in each facility who is awake when children in care are sleeping, For ages less than 3, at least one paid staff member who is awake for every 6 children in each building and in each facility when children are sleeping. At least one staff member awake on the premises for each 20 young adults. Nonambulatory children: At least one paid staff member who is awake, for each 4 children at all times.		
37	Public Hearings	We cannot afford overnight staffing, our rates are set until October, 2016.		
38	Public On-Line	The requirement for staff to be awake and available at all times is problematic in a family-style model. Financially difficult and intrusive to children.		
39	CAA			

	A	B	C	D
40	FIRST			
41	ACHSP			
42	Rule(s)	Topic(s)		Notes
43		Alternative Method of Compliance		
44	Current Rule: R6-5-7415	<p>The Licensing Authority, with the approval of the Attorney General’s Office, may permit a licensee to substitute an alternative method of compliance for a licensing requirement or objective prescribed in this Article and not otherwise required by law, if the following conditions are met:</p> <ol style="list-style-type: none"> 1. The licensee seeking to achieve compliance through an alternative methodology proposes, to the satisfaction of the Licensing Authority, that the licensee can satisfy the objective of the requirement through the alternative methodology; and 2. Allowing the licensee to achieve compliance through an alternative method will not jeopardize the health, safety, or well-being of children who are or may be placed in the licensee’s care. <p>B. Approval of an alternative methodology expires as prescribed in the written letter authorizing the alternative, or at the end of the licensing year, and must be annually renewed.</p> <p>C. The Licensing Authority is not obligated to permit an alternative method of compliance or to renew approval of the alternative methodology.</p>		
45	Proposed Rule	Not in proposed rules.		
46	Public/On-Line	Will this rule be reinstated?		
47	CAA			
48	AASK/FIRST			
49	OTHER			
50	ACHSP			
51	Rule(s)	Topic(s)		Notes
52	R21-7-307	Amendment/Criteria for adding an additional facility (satellite facility in current rules)		

	A	B	C	D
53	Current Rule: R6-5-7410	A currently licensed agency that wishes to obtain an operating certificate for an additional satellite facility shall send the Licensing Authority a letter of intent. In determining whether to grant an additional operating certificate to an agency operating under a provisional license, the Licensing Authority shall also consider: 1. The nature and extent of the problems giving rise to the deficiency that caused the agency to be placed on provisional license status; and 2. The agency's progress on its corrective action to resolve the problems.		
54	Proposed Rule Posted on 8/18/2015	A currently licensed facility may apply for an additional facility if the agency has: Had one year of experience operating a CWA in AZ, have a regular license in good standing, no open DCS or licensing investigations pending, no current outstanding corrective action plans and no validated licensing concerns within the past 12 months.		
55	Public Hearing	Some investigations have been open for over a year, they do not go quickly, this would prevent adding a new facility,		
56	On-Line	Rewrite so that there is not a one-year restriction before opening an additional facility. It is unfair to punish an organization based on claims that have not been substantiated. An open investigation could e for years on end and a group home would not be able to expand.		
57	CAA			
58	FIRST			
59	ACHSP			
60	Rule(s)	Topic(s)		Notes
61		Reasonable and Prudent Parenting Standard		
62	Current Rule	Not in current rules.		
63	Proposed Rule			
64	Public/On-Line	This is not defined, I do not understand the application of the requirement for staff.		
65	CAA	The definitions and provisions within the rules regarding "Reasonable and Prudent Parenting Standards" and "Normalcy "need to be clear and follow federal guidance of the Preventing Sex Trafficking and Strengthening Families Act, (SFA). This ensures that children in group homes or other residential care facilities have access to someone at all times, who is trained in making decisions using the RPPS and consent to the youth's participation in activities.		
66	TEEN CHALLENGE	Our intake process is a as a private placement, privately funded agency makes that determination prior to intake. How does this apply to a shelter care in our situation? Parents consent is sought for any activities out of the ordinary. This applies to children in state care. Placements in Teen Challenge are made by parents themselves. Parents must approve all activities.		

	A	B	C	D
67	FIRST			
68	ACHSP	Use the definition in Chapter 6.		
69	Rule(s)	Topic(s)		Notes
70	R21-7-317	Combining Populations		
71	Current Rule R6-5-7423	<p>F. A licensee shall not combine its child welfare program, as defined pursuant to subsection (A), with other forms of care or programming such as child care, nursing or convalescent care for adults, or adult developmental care unless the licensee:</p> <ol style="list-style-type: none"> 1. Physically separates children in the child welfare program from persons in other programs, and 2. Prevents interaction between children in the child welfare program and persons in other programs. 		
72	Proposed Rule Posted on 8/18/2015	A licensee shall not combine its child welfare program as defined in R21-7-101(21), with other forms of care or programming including foster care, child care, nursing or convalescent care for adults, or adult developmental care unless the licensee physically separates children in the child welfare program in other programs and prevents interaction between children in the child welfare program and persons in other programs.		
73	Public/On-Line			
74	Public Hearing	We have related programs, we have allowed children in custody to seek reunification with a single mother, but the populations have different addresses. We have been doing this program for twenty years.		
75	CAA	How does this apply to foster children who reside on shelter status such as Canyon State who are not dually adjudicated or delinquent? The language here should be clearer and explicated to address the need to provide different program and rule expectations for different populations served. Dependent children should not be restricted similarly as delinquent youth may be.		
76	FIRST			
77	ACHSP			
78	Rule(s)	Topic(s)		Notes
79	R21-7-325	New Training Requirements		
80	Current Rule R6-5-7433	<p>A licensee shall have a written plan for orientation and training of all staff. The plan shall include a method for the licensee to evaluate whether the person has actually learned the information that was the subject of orientation or training.</p> <p>B. All staff shall receive initial orientation and training before assignment to solo supervision of children. The initial orientation and training shall include: CPR, initial health screening, de-escalation and physical restraint practices, child care, and emergency admissions. FT - support = four hours of annual, FT = 24 hours of annual training.</p>		

	A	B	C	D
81	Proposed Rule Posted on 8/18/2015	A licensee shall have an approved written plan for training that is OLR approved. Includes trauma informed care, mandatory reporting, and reasonable and prudent parenting standards. All staff - 4 hours, all direct care staff - 24 hours annual training.		
82	Public Hearing	Will DCS train our staff in trauma informed care and reasonable and prudent parenting standards?		
83	Public/On-Line			
84	CAA	This section does not make the distinction between the necessary level of training of staff based on the levels of care, (i.e. group home, therapeutic group home or residential treatment center). There should be a minimum requirement for each level of care in terms of hours trained and topics covered and more advanced training as the level of care intensifies related to specialized care.		
85	TEEN CHALLENGE	Should be exempt from reasonable and prudent parenting standard.		
86	AAC			
87	ACHSP			
88	Rule(s)	Topic(s)		Notes
89	R21-7-102(B)(5)(7)	School District Letter		
90	Current Rule	Not in current rules.		
91	Proposed Rule Posted on 8/18/2015	Coordination with school district. A signed letter from the school district that the applicant has conferred with the school district where the facility will be located to advise the district of the existence of the facility and any special needs the children likely to be in care or the facility may have;		
92	Public/On-Line			
93	CAA	While communication with the local school district would be helpful, addressing this would be better suited in the group care contract and does not fit within the scope of rules.		
94	FIRST			
95	ACHSP			
96				
97	R21-7-205(B) and ©	Staff Requirements for a Placing Agency		
98	Current Rule R6-5-7432	Education and experience listed for the CEO, Program Director, Facility Supervisor, Supervisors, Direct care staff, Program Instructors.		
99	Proposed Rule Posted on 8/18/2015	Education and experience for a executive director, casework supervisor, social worker, caseworker, office staff and consultants. Criteria for personnel practices and policies of a placing agency (such as : job descriptions, duties, benefits information, staff development, handling of grievances)		
100	Public/On-Line			
101	AAC			

	A	B	C	D
102	FIRST	Removes R21-7-205(B) All staff requirements, (Executive Director, casework supervisor, social worker, caseworker and office staff.) Removes consultant requirements for medical and behavioral health professionals. Recommends brief language summarizing personnel practices and removes R21-7-204(C)(2) personnel policies. Retains the contents of employee's and volunteers' personnel files.		
103	ACHSP			
104	Rule(s)	Topic(s)		Notes
105	R21-7-104, R21-7-301	Provisional License		
106	Current Rule - R6-5-7419	<p>A. If an agency or a facility is temporarily unable to conform to the standards prescribed in this Article, the Licensing Authority may issue a provisional license to the agency, or convert a regular license to provisional status, as prescribed in A.R.S. § 8-505(C). For the purpose of this Section, "temporarily unable" means a time period of six months or less. B. The Licensing Authority may impose provisional license status on an agency operating multiple facilities even though less than all facilities are out of compliance.</p> <p>C. The Licensing Authority may issue a provisional license only when:</p> <ol style="list-style-type: none"> 1. The non-compliance is correctable; and 2. The non-compliance does not jeopardize the health, safety, or well-being of children in care. <p>D. If the Licensing Authority issues a provisional license, the agency shall cooperate with the Licensing Authority to develop a written corrective action plan that meets the requirements of R6-5-7418(C) and (D) and shall comply with the terms of the plan.</p>		
107	Proposed Rule Posted on 8/18/2015	Provisional License: Can be issued for minor, correctable, and not potentially injurious to the safety or welfare of a child and the agency agrees to correct the deficiency or deficiencies.		
108	Public/On-Line			
109	CAA	What are the terms and conditions of a provisional license? If this section remains, it needs to be clearer what types of exceptions will be made.		
110	AASK/FIRST	Add the time frame of six months and cite ARS § 8-505 and specify "child welfare agency" in rule.		
111	ACHSP			
112	Proposed Rule	Topic(s)		Notes
113	Title 21, Chapters 6 and 7	Use of "Child Placing Agency," "Placing Agency," "Child Welfare Agency," and "Foster Home Licensing Agency."		
114	Current Rule			
115	Proposed Rule	See definitions handout.		
116	Public/On-Line			
117	Public/On-Line			
118	CAA			

	A	B	C	D
119	AAC			
120	FIRST			
121	FCRC			
122	ACHSP			

**ARTICLE 74. LICENSING PROCESS AND LICENSING REQUIREMENTS FOR
CHILD WELFARE AGENCIES OPERATING RESIDENTIAL GROUP CARE
FACILITIES AND OUTDOOR EXPERIENCE PROGRAMS**

R6-5-7401. Definitions

In addition to the definitions contained in A.R.S. § 8-501, the following definitions apply in this Article:

1. “Abandonment” has the same meaning ascribed to “abandoned” in A.R.S. § 8-531(1).
2. “Abuse” means the infliction or allowing of physical injury, impairment of bodily function or disfigurement or the infliction of or allowing another person to cause serious emotional damage as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior and which emotional damage is diagnosed by a medical doctor or psychologist pursuant to § 8-821 and which is caused by the acts or omissions of an individual having care, [physical] custody and control of a child. Abuse includes:
 - (a) Inflicting or allowing sexual abuse pursuant to § 13-1404, sexual conduct with a minor pursuant to § 13-1405, sexual assault pursuant to § 13-1406, molestation of a child pursuant to § 13-1410, commercial sexual exploitation of a minor pursuant to § 13-3552, sexual exploitation of a minor pursuant to § 13-3553, incest pursuant to § 13-3608 or child prostitution pursuant to § 13-3212.
 - (b) Physical injury to a child that results from abuse as described in § 13-3623, subsection C. A.R.S. § 8-201(2).
3. “Accredited” means the approval and recognition of an institution of learning as maintaining those standards requisite for its graduates to gain admission to other institutions of higher learning or to achieve credentials for professional practice. An example of an accrediting body is the North Central Association of Colleges and Universities.
4. “Administrative completeness review time frame” means the number of days from [the Licensing Authority’s] receipt of an application for a license until [the Licensing Authority] determines that the application contains all components required by statute or rule, including all information required to be submitted by other government agencies. The administrative completeness review time frame does not include the period of time during which an agency provides public notice of the license application or performs a substantive review of the application. A.R.S. § 41-1072(1).
5. “Adverse action” means suspension or revocation of a license, denial of a renewal license, or making a material change in licensing status.
6. “After-care” means services provided to a child after the child is discharged from a licensee’s care and may also include services for the child’s family.
7. “Applicant” means a person who submits a written application to the Licensing Authority to become licensed or to renew a license to operate a child welfare agency or a residential group care facility.
8. “Barracks” means a building that:
 - a. Is designed and constructed or remodeled for the specific purpose of housing large numbers of children of the same gender;
 - b. Has wide, open sleeping areas for children, under one roof;
 - c. Is identified and described as a barracks or dormitory in the agency’s promotional and organizational materials; and

- d. Is made known as a barracks or dormitory to placing agencies and persons considering placement of a child.
9. “Behavior management” means the policies, procedures, and techniques a licensee uses to control conduct as prescribed in R6-5-7456.
10. “Child placing agency” means a person or entity that is licensed or authorized to receive children for care, maintenance, or placement in a foster home, because:
- The Department has licensed the person or entity as a child welfare agency pursuant to A.R.S. § 8-505; or
 - It is an entity with statutory authorization to place children.
11. “Child welfare agency” or “agency”
- Means:*
 - Any agency or institution maintained by a person, firm, corporation, association, or organization to receive children for care and maintenance or for 24-hour social, emotional, or educational supervised care or who have been adjudicated as a delinquent or dependent child.*
 - Any institution that provides care for unmarried mothers and their children.*
 - Any agency maintained by the state, or a political subdivision thereof, person, firm, corporation, association, or organization to place children or unmarried mothers in a foster home.*
 - Does not include state operated institutions or facilities, detention facilities for children established by law, health care institutions that are licensed by the department of health services pursuant to Title 36, Chapter 4 or private agencies that exclusively provide children with social enrichment or recreational opportunities and that do not use restrictive behavior management techniques. A.R.S. § 8-501(A)(1).*
12. “Corrective action” means a specific course of conduct an agency will follow to remedy violations of the licensing requirements prescribed in this Article, within a specified period of time.
13. “Corrective action plan” means a written document describing an agency’s corrective action, as prescribed in R6-5-7418.
14. “CPS” means Child Protective Services, a Department program responsible for investigating reports of child maltreatment.
15. “CPSCR” means the Child Protective Services Central Registry, a computerized database, which CPS maintains according to A.R.S. § 8-804.
16. “De-escalation” means a method of verbal communication or non-verbal signals and actions, or a combination of signals and actions, that interrupt a child’s behavior crisis and calm the child.
17. “Department” or “DES” means the Department of Economic Security.
18. “Developmentally appropriate” means an action that takes into account:
- A child’s age and family background;
 - The predictable changes that occur in a child’s physical, emotional, social, cultural, and cognitive development; and
 - A child’s individual pattern and timing of growth, personality, and learning style.
19. “DHS” means the Department of Health Services.
20. “Direct care staff” means the facility staff who provide primary personal care, guidance, and supervision to children in care.
21. “Discharge plan” means:

- a. A written description of:
 - i. A program of action to prepare a child for release from a facility; and
 - ii. After-care;
 - b. That is developed by a licensee in cooperation with a child's service team.
22. "Discipline" means a teaching process through which a child learns to develop and maintain the self-control, self-reliance, self-esteem, and orderly conduct necessary to assume responsibilities, make daily living decisions, and live according to accepted levels of social behavior.
23. "Document" means to make and retain a permanent written or electronic record of a fact, event, circumstance, observation, contact, or communication.
24. "Exploitation" means the act of taking advantage of, or to make use of a child selfishly, unethically, or unjustly, for one's own advantage or profit, in a manner contrary to the best interests of the child, such as having a child panhandle, steal, or perform other illegal activities.
25. "Facility" or "residential group care facility" means a living environment operated by a child welfare agency, where children are in the care of adults unrelated to the children, 24 hours per day.
- a. "Facility" does not include a program licensed as a behavioral health service agency by the Department of Health Services under A.R.S. § 36-405 and 9 A.A.C. 20.
 - b. "Facility" does include an outdoor experience program.
 - c. When used in reference to an outdoor experience program, "facility" means the campsite at which or the mobile equipment in which children are housed.
26. "File" means a place where information is stored through written, electronic, or computerized means.
27. "Foot candles" means a unit of luminous intensity that can be measured with a light meter.
28. "Governing body" means an individual or group of individuals responsible for the policies, activities, and operations of a facility, as prescribed in R6-5-7424.
29. "Individual education plan" or "IEP" means a written document that describes educational goals for a particular child and the services the child needs to attain those goals.
30. "Institution" as used in A.R.S. § 8-501(A)(1) means an entity meeting two or more of the following criteria:
- a. Solicits charitable contributions;
 - b. Is organized as a profit or non-profit corporation with a board of directors and officers;
 - c. Publishes and distributes information or promotional materials about its program or operations;
 - d. Requires residents to formally apply for residency through use of application forms or other similar paperwork;
 - e. Operates a structured program of care pursuant to written policies, procedures, guidelines, or rules; or
 - f. Advertises itself or holds itself out in the community as an institution that provides care or social services.
31. "Institution for Unwed Mothers and Children" means a child welfare agency, as described in A.R.S. § 8-501(A)(1)(a)(ii), that is licensed to care for unmarried mothers

who are under age 18 at the time of admission to the agency and the children of those mothers.

32. "License" means a document issued by the Licensing Authority to an individual or non-governmental business, which authorizes the individual or business to operate a child welfare agency in compliance with this Article.
33. "Licensee" means the person or entity holding a license. When used in reference to a duty, task, or obligation, the term "licensee" includes the staff who work at an agency or facility and who are responsible for doing the acts necessary to fulfill the requirements of this Article.
34. "Licensed medical practitioner" means a person who holds a current license as a physician, surgeon, nurse practitioner, or physician's assistant pursuant to A.R.S. §§ 32-1401 et seq., Medicine and Surgery; A.R.S. §§ 32-1800 et seq., Osteopathic Physicians and Surgeons; A.R.S. §§ 32-2501 et seq., Physician Assistants; and A.R.S. §§ 32-1601 et seq., Nursing and R4-19-501(A)(1), Registered Nurse Practitioner, respectively.
35. "Licensing Authority" means the Department administrative unit that monitors and makes licensing determinations for agencies and facilities, including issuance, denial, suspension, and revocation of a license or operating certificate, and imposition of corrective action.
36. "Licensing representative" means a person employed by the Licensing Authority to investigate and monitor applicants and licensees.
37. "Licensing year" means a one-year time period that begins on the date an agency obtains its initial license to operate, and ends one year later.
38. "Living unit" means a specific grouping of children who are assigned to and share a distinct and common physical space within a facility.
39. "Maltreatment" means abuse, neglect, abandonment, or exploitation, of a child.
40. "Material change in licensing status" means, for the purpose of A.R.S. § 8-506.01,
 - a. Any of the following actions:
 - i. Denial, suspension, or revocation of an operating certificate;
 - ii. At any time following issuance of an initial license, imposition of provisional license status, in lieu of a regular license as prescribed in R6-5-7419; or
 - iii. A change in a term appearing on the face of a license or operating certificate, including: a.) Geographic area served; b.) Age, number, or gender of children served; or c.) Type of services offered;
 - b. But does not include the act of placing an agency on a corrective action plan to bring the agency into compliance with licensing requirements as prescribed in R6-5-7418.
41. "Mechanical restraint" means:
 - a. An article, device, or garment that:
 - i. Restricts a child's freedom of movement or a portion of a child's body;
 - ii. Cannot be removed by the child; and
 - iii. Is used for the purpose of limiting the child's mobility;
 - b. But does not include an orthopedic, surgical, or medical device that allows a child to heal from a medical condition or to participate in a treatment program.
42. "Medication" means an agent, such as a drug or remedy, used to prevent or treat disease, illness or injury, including both prescribed and over-the-counter agents.

43. "Mobile dwelling" means a structure, such as a trailer or recreational vehicle as defined in A.R.S. § 41-2142(30). Mobile dwelling does not mean a mobile, manufactured, prefabricated, or modular home as defined in A.R.S. § 41-2142(14), (24), or (26).
44. "Neglect" has the same meaning as A.R.S. § 8-201(21).
45. "Non-ambulatory child" means a child who cannot walk due to a physical disability or impairment, rather than as a result of the child's normal age and developmental level.
46. "Onsite" means located on the physical property operated by the licensee for the purpose of the licensee's residential program and includes the contiguous area within:
 - a. A single structure;
 - b. A cluster of structures;
 - c. A complex containing single or multiple family dwelling units with or without separate entrances for each unit;
 - d. A campus containing any combination of the residences listed in subsections (a)-(c), as approved by the Licensing Authority.
47. "Operating certificate" means a document that the Licensing Authority issues to a particular facility that is run by an agency holding a license, as prescribed in R6-5-7409.
48. "Outdoor experience program" means a child welfare agency that is located in a cabin or portable structure such as a tent or covered wagon and primarily uses the outdoors to provide recreational and educational experiences in group living, either in a fixed campsite or in a program with an unfixd site, such as a wagon train or wilderness hike.
49. "*Out-of-home placement*" means the placing of a child in the custody of an individual or agency other than with the child's parent or legal guardian and includes placement in temporary custody pursuant to § 8-821, subsection A or B, voluntary placement pursuant to 8-806 or placement due to dependency actions. A.R.S. § 8-501(A)(7).
50. "*Overall time frame*" means the number of days after receipt of an application for a license during which [the licensing authority] determines whether to grant or deny a license. The overall time frame consists of both the administrative completeness review time frame and the substantive review time frame. A.R.S. § 41-1072(2).
51. Paid staff means:
 - a. A licensee's paid employees who work at a facility;
 - b. Any temporary worker or independent contractor the licensee uses as a temporary replacement for an employee who is sick, on leave, or unavailable; and
 - c. Any independent contractor that the licensee retains to provide children in care with direct services at the facility.
52. "*Parent or parents*" means the natural or adoptive mother or father of a child. A.R.S. § 8-501(A)(8).
53. "Person" means an individual, partnership, joint stock company, business trust, voluntary association, corporation, or other form of business enterprise, including nonprofit or governmental organizations.
54. "Personally identifiable information" means any information which, when considered alone, or in combination with other information, identifies, or permits another person to readily identify the person who is the subject of the information, and includes:
 - a. Name, address, and telephone number;
 - b. Date of birth;
 - c. Photograph;
 - d. Fingerprints;

- e. Physical description;
 - f. School;
 - g. Place of employment; and
 - h. Unique identifying number, including:
 - i. Social Security number;
 - ii. Driver's license number;
 - iii. License number; and
 - iv. Court case number.
55. "Physical restraint" means the use of bodily force to restrict a child's freedom of movement, but does not include holding a child firmly enough to prevent the child from harming himself or herself, or others, but gently enough so that the child is not harmed by being held.
56. "Placing agency or person" means the child placing agency, parent, or guardian, having legal custody of a child and who makes the decision to send the child to reside at a particular agency.
57. "Potentially hazardous food" means a food that is:
- a. Natural or synthetic and capable of rapid and progressive growth of infectious or toxigenic microorganisms or the growth and production of *Clostridium botulinum*;
 - b. Of animal origin and is raw or has been heated;
 - c. Of plant origin and is heated or consists of raw seed sprouts;
 - d. A cut melon; or
 - e. A garlic and oil mixture.
58. "Program director" means a person who meets the qualifications listed in R6-5-7432(B).
59. "*Relative*" means a grandparent, great grandparent, brother or sister of whole or half blood, aunt, uncle, or first cousin. A.R.S. § 8-501(A)(12).
60. "Residential environment" means a facility building or any portion of a facility building that is used for living, sleeping, counseling, dining, or academic purposes.
61. "Restrictive behavior management" means a form of behavior control that is subject to limitations as prescribed in R6-5-7456(D)-(F).
62. "Safeguard" means to use reasonable and developmentally appropriate measures to minimize the risk of harm to a child in care and to ensure that a child in care will not be harmed by a particular object, substance, or activity. Where a specific method is not otherwise prescribed in this Article, safeguarding may include:
- a. Locking up a particular substance or item;
 - b. Putting a substance or item beyond the reach of a child who is not mobile;
 - c. Erecting a barrier that prevents a child from reaching a particular place, item, or substance;
 - d. Mandating the use of protective safety devices;
 - e. Providing staff supervision;
- or
- f. Providing a young adult with safety information and generalized instruction necessary to promote the safe and appropriate use of potentially dangerous objects.
63. "Seclusion" means placing a child alone in a room with closed, locked doors that cannot be opened from the inside as prohibited by R6-5-7456(C)(6).
64. "Service plan," which is sometimes described as a "case plan," means a goal-oriented, time-limited individualized program of action that:

- a. Describes the plans for treating and providing services to a child and the child's family, and
 - b. Is developed by a licensee in cooperation with a child's service team.
65. "Service team" means the group of persons listed in R6-5-7441(D)(1) who participate in development and review of a child's service plan and discharge plan.
66. "Shelter care facility" means an agency facility that receives children for temporary out-of-home care, 24 hours per day, when children request care, or are placed in care by a placing agency, a law enforcement agency, a parent, a guardian, or a court.
67. "Significant person" means a person who is important or influential in a child's life and may include a family member or close friend.
68. "Sleeping area" means a single bedroom, or a cluster of two or more bedrooms, located in an adjacent area of a dwelling.
69. "Social worker" means a person with a bachelor's, master's, or doctoral degree in a field of organized work called social work, which is intended to advance the social conditions of a community through provision of counseling, guidance, and assistance, especially in the form of social services to individuals.
70. "Staff" means a licensee's paid staff and unpaid staff.
71. *"Substantive review time frame" means the number of days after the completion of the administrative completeness review time frame during which [the licensing authority] determines whether an application or applicant for a license meets all substantive criteria required by statute or rule. Any public notice and hearings required by law shall fall within the substantive review time frame. A.R.S. § 41-1072(3).*
72. "Swimming pool" means any on-grounds, natural or man-made body of water that is used for the purposes of swimming, recreation, or physical therapy, and includes spas and hot tubs.
73. "Threat" means an expression of intent to hurt, destroy, or take action prohibited by this Article or the licensee's policies, but does not include an expression of intent to impose a planned consequence for misbehavior if the consequence is not prohibited by this Article or the licensee's policies.
74. "Transitional program" means services provided to a child who is being emancipated as an adult, or a person who has reached the age of 18 and is considered an adult as a matter of law, in order to assist the child or person in becoming independent.
75. "Unpaid staff" means a licensee's volunteers, students, and interns who work, train, or assist at a facility.
76. "Unusual incident" means one or more of the events listed in R6-5-7434(C), (D), (E), or (G).
77. "Work day" means 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding Arizona state holidays.
78. "Young adult" means an individual, age 16 to 21, who has been assessed and determined to be appropriate for preparation for adult self-sufficiency. The assessment or determination shall be made by:
- a. The placing agency, if the young adult is in the care, custody, and control of the state of Arizona;
 - b. A parent or legal guardian of the young adult, if subsection (a) does not apply;
 - c. The licensee, if subsections (a) and (b) do not apply.

Historical Note

Adopted effective May 19, 1977 (Supp. 77-3). Former Section R6-5-7401 repealed; new Section R6-5-7401 filed with the Secretary of State's Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2). Amended by emergency rulemaking at 12 A.A.R. 2233, effective June 1, 2006 for 180 days (Supp. 06-2). Emergency renewed at 12 A.A.R. 4732, effective November 28, 2006 for 180 days (Supp. 06-4). Amended by final rulemaking at 13 A.A.R. 2049, effective May 21, 2007 (Supp. 07-2).

R6-5-7402. Request for Initial Application - New Applicant

- A. A person who wants to operate a residential group care facility shall initiate the licensing process by contacting the Licensing Authority to request an application for a child welfare agency license.
- B. Upon request, the Licensing Authority shall send the prospective applicant an application package containing:
 - 1. A cover letter outlining the licensing process and requesting a responsive letter of intent,
 - 2. An application form,
 - 3. A statement of requirements for licensure, and
 - 4. A form the applicant can use to obtain city or county zoning clearance.

Historical Note

Adopted effective May 19, 1977 (Supp. 77-3). Former Section R6-5-7402 repealed; new Section R6-5-7402 filed with the Secretary of State's Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2).

R6-5-7403. Letter of Intent - New Applicant

- A. The prospective applicant shall prepare a responsive letter of intent to proceed with licensure, and return it to the Licensing Authority. The letter of intent shall include the following information:
 - 1. The applicant's name, address, and telephone and telefacsimile numbers;
 - 2. The name of the applicant's chief executive officer or administrator, with a description of that person's qualifications to operate the agency;
 - 3. A description of community or statewide need for the service or program the applicant intends to provide;
 - 4. A plan for financing the proposed agency during the first year of operation;
 - 5. A statement that the applicant has conferred with the school district where the facility will be located to advise the district of any special needs that children likely to be in care at the facility may have; and
 - 6. A description of the proposed agency's program and services, which shall address the following areas, if applicable:
 - a. Any organization from which the applicant will seek accreditation;
 - b. The form of on-campus educational programs the applicant will offer;
 - c. The characteristics of the children the applicant plans to serve;
 - d. The applicant's primary source of referrals;
 - e. The frequency and method by which the applicant will provide or offer psychiatric, psychological, or counseling services;
 - f. Whether the applicant will employ behavioral health practitioners, or contract for behavioral health services; and

- g. A general description of the number and qualifications of the applicant's professional staff.
- B. Within 10 work days of receiving a letter of intent, a licensing representative shall contact the applicant.
 - 1. If the Licensing Authority determines that an applicant may require licensure as a behavioral health service agency under A.R.S. § 36-405 and 9 A.A.C. 20, the Licensing Authority shall refer the applicant to the Department of Health Services for evaluation. In determining whether to refer an applicant to DHS, the Licensing Authority shall consider the factors set forth on Appendix 1.
 - 2. For all other applicants, the representative shall schedule an appointment for a licensing consultation. The appointment shall occur within 45 calendar days of the date the Licensing Authority receives the letter of intent, unless the applicant requests a later consultation.
 - 3. If DHS declines to license an applicant as a behavioral health service agency, and refers an applicant to the Department for licensure as a child welfare agency, the applicant shall contact the Licensing Authority to request a licensing consultation. The Licensing Authority shall schedule the consultation within 45 calendar days of the date of the request, unless the applicant requests a later consultation.

Historical Note

Adopted effective May 19, 1977 (Supp. 77-3). Amended subsection (O), paragraph (1) effective January 21, 1985 (Supp. 85-1). Former Section R6-5-7403 repealed; new Section R6-5-7403 filed with the Secretary of State's Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2).

R6-5-7404. The Licensing Consultation; Time for Completion of Application

- A. At the licensing consultation, a licensing representative shall review the licensing application form with the applicant. The licensing representative shall explain the requirements for licensure and shall advise the applicant about:
 - 1. The information and documentation the applicant must provide to complete the application or licensing process, as set forth in R6-5-7405;
 - 2. The fingerprinting and background checks required by A.R.S. § 46-141 and R6-5-7431;
 - 3. The need for a DHS health and safety inspection of the agency and each facility, and the process for scheduling the inspection;
 - 4. The need to obtain a fire inspection and zoning clearance for the each facility;
 - 5. The need to confer with the local school district to discuss any special educational needs that the children to be served may present;
 - 6. The timelines for submission of application information; and
 - 7. The need for the Licensing Authority to conduct a site inspection as prescribed in R6-5-7406.
- B. No later than 60 days after the licensing consultation, the applicant shall provide the Licensing Authority with a complete application package, as prescribed in R6-5-7405(A).
- C. If the applicant cannot provide the information within 60 days, the applicant shall contact the Licensing Authority to request an extension of time. The Licensing Authority shall allow an extension for a fixed period of time, which shall not exceed 120 days past the original 60 days.

- D. If the applicant fails to provide the information within the time periods specified in subsections (B) and (C), the Licensing Authority shall close the applicant's file and send the applicant a written notice of closure. An applicant whose file has been closed shall reapply.
- E. For an initial application, the administrative completeness review time-frame described in A.R.S. § 41-1072(1) begins when the applicant submits the application form and the required documentation listed in R6-5-7405(A).

Historical Note

Adopted effective May 19, 1977 (Supp. 77-3). Former Section R6-5-7404 repealed; new Section R6-5-7404 filed with the Secretary of State's Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2).

R6-5-7405. Complete Application; Initial License - New Applicant

- A. A complete application package for an initial license of a new agency shall contain the information and supporting documentation listed in this subsection.
 - 1. Identification and background information: agency, facility, administrators.
 - a. Name, address, and telephone and telefacsimile numbers for the agency and all facilities operated by the agency;
 - b. Name, title, business address, and telephone and telefacsimile numbers of:
 - i. The person who serves as the chief executive officer (CEO) as prescribed in R6-5-7432(A);
 - ii. The person who serves as the program director as prescribed in R6-5-7432(B);
 - iii. The person with delegated authority to act when the CEO is absent;
 - iv. The person in charge of each separate facility as prescribed in R6-5-7432(C);
 - v. Persons holding at least a 10% ownership interest in the applicant; and
 - vi. The agency and facility medical directors, if applicable;
 - c. The educational qualifications and work history for each person identified in subsection (A)(1)(b), with that person's attached resume, employment application, or curriculum vitae;
 - d. A list of the members of the agency's governing body described in R6-5-7424, including: name, address, position in the agency, term of membership, and any relationship to the applicant;
 - e. A list of licenses or certificates for provision of medical or social services, currently or previously held by the applicant or persons listed in subsection (A)(1)(b), including those held in this state or another state or country;
 - f. A written description of any proceedings for denial, suspension or revocation of a license or certificate for provision of medical, psychological, behavioral health, or social services, pending or filed, or brought against the applicant or a person listed in subsection (A)(1)(b), including those held in this state or another state or country; and
 - g. A written description of any litigation in which the applicant or a person listed in subsection (A)(1)(b) has been a party, including, without limitation, collection matters and bankruptcy proceedings during the 10 years preceding the date of application.
 - 2. Business organization.
 - a. An organizational chart for the agency and each separate facility, showing administrative structure and staffing, and lines of authority;
 - b. Business organization documents appropriate to the applicant, including:
 - i. Articles of incorporation, by-laws, annual reports for the preceding three years; or

- ii. Partnership or joint venture agreement;
 - c. For corporations, a certificate of good standing from the Arizona Corporation Commission or comparable entity from a foreign state; and
 - d. A statement as to whether the applicant is for-profit or not-for-profit if not explained in other documents already provided.
- 3. Staff.
 - a. A list of the applicant's paid staff, including:
 - i. Name;
 - ii. Position or title;
 - iii. Degrees, certificates, or licenses held;
 - iii. Business address;
 - iv. Date of hire;
 - v. Date of last physical; and
 - vi. Date of submission for fingerprinting and background clearance;
 - b. Evidence that staff have submitted fingerprints and criminal background information, as prescribed in A.R.S. § 46-141 and R6-5-7431 and obtained a physical exam as prescribed in R6-5-7431(F); and
 - c. For any staff whose primary residence is the facility,
 - i. The name and date of birth of any persons residing with the staff member;
 - ii. Evidence that any adult residing with the staff member has submitted fingerprints and criminal background information as prescribed in R6-5-7431 and is free from communicable diseases posing a danger to children in care, as prescribed in R6-5-7431(H); and
 - iii. Evidence that the staff member's children who reside at the facility have current immunizations.
- 4. Financial Stability.
 - a. A written, proposed operating budget for start up and the first year of operation;
 - b. Verifiable documentation of funds available to pay start-up costs; the funds shall be in the form of cash or written authorization for a line of credit;
 - c. Verifiable documentation of funds available to pay operating expenses for the first three months of operations; the funds shall be in the form of cash or written authorization for a line of credit;
 - d. Verifiable documentation of financial resources to operate in accordance with the proposed operating budget for the remaining nine months of the licensing year; the resources may include:
 - i. Cash;
 - ii. Contracts for placement;
 - iii. Donations;
 - iv. Grants; and
 - v. Authorization for a line of credit;
 - e. If the applicant or one of the persons listed in subsection (A)(1)(b) has operated any child welfare agency in this state or any other state during the past 10 years, the most recent financial statement and financial audit for that agency, unless the most recent statement or audit is more than 10 years old; and
 - f. A certificate of insurance, or letter of commitment from an insurer, showing that the applicant has insurance coverage as prescribed in R6-5-7426.

5. Program.
 - a. Informational or advertising material about the agency and its facility;
 - b. For each facility, a written description of:
 - i. All services the applicant intends to provide;
 - ii. The number and type of children the applicant will serve, including: age, gender, special needs, or particular behavior problems;
 - iii. The anticipated sources of placement and referral;
 - iv. Number and qualifications of paid staff who will provide services, including the staff-child ratio, per living unit, during a 24-hour day, for a seven-day week; and
 - c. Program description, including:
 - i. Goals and objectives;
 - ii. Educational activities, with attached copy of Arizona Department of Education approval, if applicable;
 - iii. Recreational activities;
 - iv. Food and nutrition, with sample menus;
 - v. Behavior management practices;
 - vi. Religious practices, if any; and
 - vii. Medical services.
6. Documentation, Forms, and Notices. Samples of all documents, forms, and notices which the applicant will use with or provide to children placed with the agency, the parents and guardians of those children, and the persons and entities who place children, including:
 - a. Agency application for services;
 - b. Agency placement agreement;
 - c. Intake form;
 - d. Child's case file and medical record;
 - e. Forms for reports to courts and placing agencies;
 - f. Statement of client rights;
 - g. Unusual incident reports; and
 - h. Sample medication logs.
7. Policies and Procedures. The applicant's internal policies, procedures, and operations manual.
8. Physical site and environment.
 - a. The floor plan for each facility;
 - b. A DHS health and safety inspection report for each facility;
 - c. Documentation showing that the local zoning authority verifies that each agency facility complies with all applicable zoning requirements;
 - d. Fire safety inspection report from the state fire marshal or a local fire department inspector for each facility;
 - e. Any water supply report as prescribed in R6-5-7458(D);
 - f. Gas equipment inspection report as prescribed in R6-5-7465(D)(1); and
 - g. Any other inspection certificates or reports prescribed in this Article, and any building occupancy certificates.
9. Miscellaneous.
 - a. A statement authorizing the Department to investigate the applicant;

- b. The signature, under penalty of perjury, of the agency administrator or person submitting the application, attesting to the truthfulness of the information contained in the application; and
 - c. The date of application.
- B.** If an applicant has attached a copy of a policy or procedure which describes the applicant's practice or procedure on a particular issue, the applicant need not separately describe the policy or procedure on the application form, but shall indicate that the description is contained in a particular identified and attached policy.
- C.** If the Licensing Authority needs additional information to determine the applicant's fitness to hold a license or an operating certificate, ability to perform the duties of a licensee as prescribed in this Article, or ability to fulfill the requirements prescribed in the applicant's policies, procedures, and program description, the Licensing Authority may require the applicant to provide additional information, including a signed form permitting a specifically named person or entity to release information to the Licensing Authority.
- D.** An agency which does not have or is unable to obtain all or part of the information or supporting documentation listed in subsection (A) shall so indicate in a written statement filed with the application. The written statement shall explain why the information or documentation is unavailable.

Historical Note

Adopted effective May 19, 1977 (Supp. 77-3). Former Section R6-5-7405 repealed; new Section R6-5-7405 filed with the Secretary of State's Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2).

R6-5-7406. Site Inspection

- A.** After receiving a complete application package, the Licensing Authority shall notify the applicant that the application is complete, and shall schedule the applicant for a site inspection, which may require more than one visit to a site.
- B.** The site inspection shall begin no later than 45 days after the Licensing Authority receives the applicant's completed application package.
- C.** During the site inspection, the licensing representative shall:
1. Inspect the facility to ensure that any deficiencies identified in the DHS inspection report have been remedied;
 2. Verify that the facility meets the requirements of this Article;
 3. Review the applicant's policies and procedures;
 4. Review model client files;
 5. Review personnel files;
 6. Inspect the applicant's books, records, and proposed forms;
 7. Interview one or more of the applicant's governing board members, incorporators or organizers, and a representative sampling of staff who have been hired; and
 8. Inspect the applicant's computer security system and review the applicant's confidentiality safeguards.
- D.** For an initial application, the administrative completeness review time-frame described in A.R.S. § 41-1072(1) is 75 days. Before expiration of the time-frame, the Licensing Authority shall send the applicant written notice of administrative completeness or deficiency as prescribed in A.R.S. § 41-1074(A).

- E. If the applicant does not supply the missing information, as prescribed in the notice, within 60 days of the notice date, the Licensing Authority may close the file. An applicant whose file has been closed, who later wishes to become licensed, may reapply.

Historical Note

Adopted effective May 19, 1977 (Supp. 77-3). Former Section R6-5-7406 repealed; new Section R6-5-7406 filed with the Secretary of State's Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2).

R6-5-7407. Licensing Study

- A. The licensing representative shall summarize the results of the site visit, and other information gathered during the licensing process in a written licensing study, which shall be the basis for the licensing decision.
- B. The licensing study shall describe whether the applicant has:
1. Complied with all application and inspection requirements; and
 2. Demonstrated that it has:
 - a. The capital to pay all start-up costs and the financial ability to meet one year's operating expenses, as prescribed in R6-5-7405(A)(4);
 - b. The staff, expertise, facilities, and equipment to provide the services it plans to offer; and
 - c. The ability and intent to comply with the standards and requirements of this Article.
- C. The applicant may obtain a copy of the licensing study, upon request.

Historical Note

Adopted effective May 19, 1977 (Supp. 77-3). Former Section R6-5-7407 repealed; new Section R6-5-7407 filed with the Secretary of State's Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2).

R6-5-7408. Licensing Decision: Issuance; Denial; Time-Frames

- A. The Licensing Authority shall issue a written licensing decision within 30 days of concluding the applicant's final site visit. This 30 day period is the substantive review time-frame required by A.R.S. § 41-1072(3).
- B. The licensing decision shall explain whether the Licensing Authority will grant or deny a license, and the terms of the license.
1. If the Licensing Authority grants a license, the Licensing Authority shall send the license and any operating certificates with the notification letter.
 2. If the Licensing Authority issues a provisional license as prescribed in R6-5-7419 or denies a license, the Licensing Authority shall send the notice by certified mail. The notice shall contain the information listed in R6-5-7421(B) for a notice of adverse action.
- C. The overall time-frame for an initial license is 105 days.

Historical Note

Adopted effective May 19, 1977 (Supp. 77-3). Former Section R6-5-7408 repealed; new Section R6-5-7408 filed with the Secretary of State's Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2).

R6-5-7409. Licenses and Operating Certificates: Form; Term; Nontransferability

- A. If an agency's administrative office is located separately from an agency facility, the Licensing Authority shall issue a license to the agency and an operating certificate to each facility the agency operates. If the agency and facility occupy the same location, the

Licensing Authority shall issue only a license, with the information required for an operating certificate.

1. A license shall:
 - a. Identify the agency name, and the geographic area in which the agency is licensed to operate;
 - b. List each facility the agency operates, and the total number of children the agency is authorized to serve; and
 - c. Require the agency to operate each facility in accordance with the operating certificate issued to the particular facility.
2. An operating certificate shall:
 - a. Identify the agency operating the facility;
 - b. Identify the facility name, if different from the agency name, and the geographical area in which the facility is authorized to operate;
 - c. List the type of service or program to be offered at the facility; and
 - d. Specify the number, gender, and ages of children the facility may receive for care.
- B.** An operating certificate is not valid unless it has been issued in the name of an agency holding a license. Except as otherwise prescribed in subsection (A) for an agency and facility at the same location, a facility cannot operate without a current operating certificate.
- C.** A license and an operating certificate expire one year from the date of issuance, except as otherwise provided in R6-5-7410 for satellite facilities and in R6-5-7419 for provisional licenses.
- D.** An agency shall post its current license in the agency, in a conspicuous location, visible to the public. The agency shall post a facility's current operating certificate in a conspicuous location within the facility.
- E.** A license and an operating certificate cannot be transferred or assigned, and shall expire upon a change in ownership. For the purpose of this Section, a "change in ownership" includes any of the following events:
 1. Sale or transfer of the agency or facility;
 2. Bulk sale or transfer of the agency's or facility's assets or liabilities;
 3. Placement of the agency or facility in the control of a court appointed receiver or trustee;
 4. Bankruptcy of the agency or facility;
 5. Change in the composition of the partners or joint venturers of an agency or facility organized as a partnership;
 6. Sale or transfer of a controlling interest in the stock of a corporate agency or facility; or
 7. Loss of an agency's or facility's nonprofit status.

Historical Note

Adopted effective May 19, 1977 (Supp. 77-3). Amended effective May 25, 1979 (Supp. 79-3). Amended subsection (H) effective January 2, 1981 (Supp. 81-1). Former Section R6-5-7409 repealed; new Section R6-5-7409 filed with the Secretary of State's Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2).

R6-5-7410. Licensed Agency: Application for an Operating Certificate for an Additional Satellite Facility

- A.** A currently licensed agency that wishes to obtain an operating certificate for an additional satellite facility shall send the Licensing Authority a letter of intent. The letter of intent shall include the following information:
 1. The applicant's name, address, and telephone and telefacsimile numbers;

2. The name of the applicant's chief executive officer or administrator;
 3. The name, address, and telephone and telefacsimile numbers of the additional facility;
 4. A request that the Licensing Authority schedule the additional facility for a DHS health and safety inspection;
 5. The name of the person who will be in charge of the additional facility, with a description of that person's qualifications;
 6. A description of program and services to be offered at the proposed facility, including any policy or procedures unique to the facility;
 7. A statement as prescribed in R6-5-7403(A)(5) for the applicable school district; and
 8. All of the information listed in R6-5-7405(A) that differs from the information already on file for the agency, including:
 - a. Floor plan,
 - b. Fire inspection,
 - c. Zoning clearance letter,
 - d. Certificate of insurance,
 - e. Evidence of financial stability,
 - f. List of paid staff with the information required by R6-5-7405(A)(3), and
 - g. Facility staffing schedule.
- B.** Upon receipt of all information listed in subsection (A), and a report of the DHS health and safety inspection, the Licensing Authority shall schedule the facility for a site inspection, as provided in R6-5-7406.
- C.** The Licensing Authority shall prepare a licensing study and issue a licensing decision on the application for the additional operating certificate as prescribed in R6-5-7407 through R6-5-7408. In determining whether to grant an additional operating certificate to an agency operating under a provisional license, the Licensing Authority shall also consider:
1. The nature and extent of the problems giving rise to the deficiency that caused the agency to be placed on provisional license status; and
 2. The agency's progress on its corrective action to resolve the problems.
- D.** An operating certificate for an additional satellite facility expires at the end of an agency's regular licensing year.

Historical Note

Adopted effective May 19, 1977 (Supp. 77-3). Former Section R6-5-7410 repealed; new Section R6-5-7410 filed with the Secretary of State's Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2).

R6-5-7411. Application for Renewal of License and Operating Certificates

- A.** No earlier than 90 and no later than 60 days prior to the expiration date of a license, an agency may apply to the Licensing Authority for renewal of its license and any operating certificates. The Licensing Authority does not have a duty to notify the agency of license expiration. The agency shall contact the Licensing Authority to request a renewal application and to schedule a DHS health and safety inspection. The agency shall schedule its own fire inspection. Failure to timely apply or obtain inspections may result in suspension of the agency's license until the renewal process is completed.
- B.** An agency shall apply for renewal on a Department application form containing the information required in this Section.
- C.** An agency shall submit copies of the completed renewal application and supporting documents to the Licensing Authority. If the agency has not amended, changed or updated

the information or documentation since the agency last applied for or renewed its license, the agency shall indicate “no change” on the documents submitted with the renewal application.

- D.** With a renewal application, the agency shall also submit the following documentation:
1. A current financial statement prepared by an independent certified public accountant who is not employed by the agency;
 2. A certificate of current insurance coverage as prescribed in R6-5-7426;
 3. A copy of the agency’s current budget and the agency’s audit report for its preceding fiscal year;
 4. Identification of and the following background information on the agency, facility, and administrators:
 - a. Name, address, and telephone and telefacsimile numbers for the agency and all facilities operated by the agency;
 - b. Name, title, business address, and telephone and telefacsimile number of:
 - i. The person who serves as the chief executive officer (CEO) as prescribed in R6-5-7432(A);
 - ii. The person who serves as the program director as prescribed in R6-5-7432(B);
 - iii. The person with delegated authority to act when the CEO is absent;
 - iv. The person in charge of each separate facility as prescribed in R6-5-7432(C);
 - v. Persons holding at least 10% ownership interest in the applicant; and
 - vi. The agency and facility medical directors, if applicable;
 - c. The educational qualifications and work history for each person listed in subsection (D)(4)(b), with that person’s attached resume, employment application, or curriculum vitae;
 - d. A list of the members of the agency’s governing body described in R6-5-7424, including name, address, position in the agency, term of membership, and any relationship to the applicant;
 - e. A list of licenses or certificates for provision of medical or social services currently or previously held by the applicant or persons listed in subsection (D)(4)(b), including those held in this state or another state or country; the list shall include the dates the person held the license or certificate;
 - f. A written description of any proceedings for denial, suspension, or revocation of a license or certificate for provision of medical, psychological, behavioral health, or social services, pending or filed, or brought against the applicant or a person listed in subsection (D)(4)(b), including those held in this state or another state or country; and
 - g. A written description of any litigation in which the applicant or a person listed in subsection (D)(4)(b) has been a party during the 10 years preceding the date of application, including, collection matters and bankruptcy proceedings.
 5. An organizational chart for the agency and each separate facility, showing administrative structure and staffing, and lines of authority.
 6. The following information on staff:
 - a. A list of applicant’s paid staff, including:
 - i. Name;
 - ii. Position or titles;
 - iii. Degrees, certificates, or licenses held;
 - iv. Business address;
 - v. Date of hire;

- vi. Date of last physical; and
- vii. Date of submission for fingerprinting and background clearance;
- b. For any staff whose primary residence is the facility:
 - i. The name and date of birth of any persons residing with a staff member;
 - ii. Evidence that any adult residing with a staff member has submitted fingerprints and criminal background information as prescribed in R6-5-7431 and is free from communicable diseases posing a danger to children in care, as prescribed in R6-5-7431(H); and
 - iii. Evidence that the staff member's children who reside at the facility have current immunizations.
- 7. Copies of any written complaints the agency has received about its performance at its facilities during the expiring license year and the agency's response to the complaints; and
- 8. A written description of any changes in program services or locations, or the children served by the agency.
- E. For a renewal application, the administrative completeness review time-frame described in A.R.S. § 41-1072(1) begins when the applicant submits a renewal application form and the required documentation listed in this Section.

Historical Note

Adopted effective May 19, 1977 (Supp. 77-3). Former Section R6-5-7411 repealed; new Section R6-5-7411 filed with the Secretary of State's Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2). Amended by final rulemaking at 6 A.A.R. 4032, effective September 29, 2000 (Supp. 00-3).

R6-5-7412. Renewal of License and Operating Certificates: Site Inspection; Time-frames; Standard for Issuance

- A. Upon receipt of a complete renewal application, the Licensing Authority shall schedule the renewal applicant for a DHS health and safety inspection.
- B. Upon receipt of the DHS inspection report and a complete renewal application package, the Licensing Authority shall schedule the applicant for a site inspection of the agency and each agency facility.
- C. At the renewal site inspection, the licensing representative shall investigate the agency and facilities as prescribed in R6-5-7406, and may also:
 - 1. Interview staff,
 - 2. Interview clients and references,
 - 3. Observe staffings,
 - 4. Review a random sample of client and staff files,
 - 5. Conduct field visits to agency branch offices and facilities.
- D. For a renewal application, the administrative completeness review time-frame described in A.R.S. § 41-1072(1) is 45 days. Before expiration of the time-frame, the Licensing Authority shall send the applicant written notice of administrative completeness or deficiency as prescribed in A.R.S. § 41-1074(A).
- E. If the applicant does not supply the missing information, as prescribed in the notice, within 60 days of the notice date, the Licensing Authority may close the file. An applicant whose file has been closed, who later wishes to become licensed, may reapply.
- F. The Licensing Authority shall issue a licensing decision within 25 calendar days of concluding the applicant's final site visit. This 25-day period is the substantive review time-

frame under A.R.S. § 41-1072(3). The overall time-frame for a issuance of a renewal license is 70 days.

- G.** The Licensing Authority may renew an agency’s license and any operating certificate for its facility when the agency and facility:
 - 1. Demonstrate compliance with the standards set forth in applicable statutes and this Article;
 - 2. Have complied with applicable statutes and the requirements of this Article during the expiring period of licensure; and
 - 3. Have corrected any problems that resulted in imposition of a provisional license.
- H.** The Licensing Authority shall issue a renewal licensing decision as prescribed in R6-5-7408(B).

Historical Note

Adopted effective May 19, 1977 (Supp. 77-3). Former Section R6-5-7412 repealed; new Section R6-5-7412 filed with the Secretary of State’s Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2).

R6-5-7413. Notification to Licensing Authority of Changes Affecting License; Staff Changes

- A.** A licensee shall send the Licensing Authority written notification of any planned change in the licensee’s name, ownership, agency location, facility location, governing board member, chief executive officer, or program director, at least one month before the change. If the change occurs without sufficient time for prior written notice, the licensee shall orally notify the Licensing Authority as soon as the change is known, and shall send the Licensing Authority written confirmation within 48 hours of giving oral notice.
- B.** If a licensee wishes to make a substantial change as described in subsection (C), the licensee shall:
 - 1. Provide the Licensing Authority with prior written notice of the change at least one month before the effective date of the change; and
 - 2. Apply for an amended license as prescribed in R6-5-7414.
- C.** As used in subsection (B), “substantial change” means any of the following:
 - 1. An event that will cause the licensee to be out of compliance with:
 - a. The terms stated on the face of the license or an operating certificate; or
 - b. A standard prescribed in this Article;
 - 2. A change in a building or a physical site at the agency or facility if that change will alter the level or nature of care provided to children; or
 - 3. Substantive revision of the policies and procedures required by this Article.
- D.** Within five work days of a paid staff member’s hiring or separation, the licensee shall complete and send the Licensing Authority a Department form LC-008, “Child Welfare Agency Employee Central Registry,” with the following information on the paid staff member:
 - 1. Name,
 - 2. Date of birth,
 - 3. Social security number,
 - 4. Date fingerprinted and fingerprinting results,
 - 5. Position held,
 - 6. Date of and reason for separation from employment, and
 - 7. Opportunity for rehire.

Historical Note

Adopted effective May 19, 1977 (Supp. 77-3). Former Section R6-5-7413 repealed; new Section R6-5-7413 filed with the Secretary of State's Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2).

R6-5-7414. Amended License or Operating Certificate

- A.** The Licensing Authority may issue an amended license or operating certificate to reflect a change in an agency or facility name or the terms of a license or an operating certificate if the change does not cause the agency or facility to fall out of compliance with applicable statutes and this Article.
- B.** The Licensing Authority shall not issue a license for an agency or an operating certificate for a facility that has moved to a new location until the agency or facility has:
 - 1. Provided the information listed in R6-5-7405(A)(8),
 - 2. Passed a DHS health and safety inspection,
 - 3. Passed a fire inspection,
 - 4. Passed a Licensing Authority site inspection, and
 - 5. Submitted any new staff and household members for fingerprinting and criminal background checks as prescribed in A.R.S. § 46-141 and R6-5-7431.
- C.** An amended license or operating certificate expires at the end of the agency or facility's regular licensing year.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7415. Alternative Method of Compliance

- A.** The Licensing Authority, with the approval of the Attorney General's Office, may permit a licensee to substitute an alternative method of compliance for a licensing requirement or objective prescribed in this Article and not otherwise required by law, if the following conditions are met:
 - 1. The licensee seeking to achieve compliance through an alternative methodology proposes, to the satisfaction of the Licensing Authority, that the licensee can satisfy the objective of the requirement through the alternative methodology; and
 - 2. Allowing the licensee to achieve compliance through an alternative method will not jeopardize the health, safety, or well-being of children who are or may be placed in the licensee's care.
- B.** Approval of an alternative methodology expires as prescribed in the written letter authorizing the alternative, or at the end of the licensing year, and must be annually renewed.
- C.** The Licensing Authority is not obligated to permit an alternative method of compliance or to renew approval of the alternative methodology.
- D.** The Licensing Authority shall document the alternative and the findings required by subsection (A) in the licensing file.
- E.** The Licensing Authority may revoke the licensee's permission to comply through an alternative method if the Licensing Authority finds that a condition listed in subsection (A)(1) or (2) is not met.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7416. Monitoring

- A. The Licensing Authority shall monitor the ongoing operations of agencies and facilities.
- B. Monitoring activities may include the following:
 - 1. Announced and unannounced inspections of an agency or a facility, including both physical premises and internal operations, books, records, policies, procedures, logs, manuals, files, inspection reports, certificates, and any other document prescribed by this Article;
 - 2. Interviews with clients, staff, or other persons with information about the agency; and
 - 3. Observation of program activities.
- C. A licensee shall cooperate with the Licensing Authority's monitoring functions. Cooperation includes:
 - 1. Making the agency, facility, and program activities available to licensing representatives for inspection and observation;
 - 2. Providing the Licensing Authority with information or documentation requested;
 - 3. Making staff available for interview; and
 - 4. Allowing children in care to be interviewed.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997
(Supp. 97-2).

R6-5-7417. Complaints; Investigations

- A. If the Licensing Authority receives an oral complaint about a licensee, agency, or facility, the Licensing Authority shall ask the complaining party to submit the complaint in writing, but shall investigate complaints as prescribed in this Section even if the complaining party does not put the complaint in writing.
- B. The Licensing Authority shall refer all complaints involving allegations of child maltreatment to CPS as required by A.R.S. § 13-3620 for investigation as prescribed in A.R.S. § 8-546.01(C).
- C. The Licensing Authority shall investigate complaints about a licensee through one or more of the following methods:
 - 1. Telephone contact with the licensee,
 - 2. Interviews with the complaining party,
 - 3. Interviews with the licensee's staff,
 - 4. Interviews with the licensee's clients,
 - 5. Interviews of witnesses to the matters at issue,
 - 6. Inspections of records and documents related to the issues raised in the complaint,
 - 7. Announced and unannounced inspections of the agency or a facility,
 - 8. Evaluation of a law enforcement or CPS report for evidence of a licensing violation, and
 - 9. Any other activity necessary to validate or refute the allegations.
- D. A licensee shall cooperate in any Department investigation as prescribed in R6-5-7416(C).
- E. Upon completion of an investigation as described in subsection (C), the Licensing Authority shall:
 - 1. Find that the complaint is invalid, document the findings in the agency's licensing file, and close the investigation;
 - 2. Find that the complaint is valid and take disciplinary action against the licensee as prescribed in R6-5-7419 and R6-5-7420, or require corrective action as prescribed in R6-5-7418; or

3. Find that the complaint cannot be validated or refuted based on the available evidence and document the finding in the licensing file.
- F.** The Licensing Authority shall provide the licensee with an oral report of any findings made under subsection (E) and, upon the licensee's request, a copy of the written findings placed in the licensee's file. At the time of giving the oral report, the licensing representative shall advise the licensee of the opportunity to obtain a copy of the written findings.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997
(Supp. 97-2).

R6-5-7418. Corrective Action

- A.** If a deficiency is correctable within a specified period of time and does not jeopardize the health or safety of a child, the Licensing Authority may place the agency on a corrective action plan to cure the deficiency in lieu of the disciplinary measures prescribed in R6-5-7419 and R6-5-7420.
- B.** In determining whether to require corrective action in lieu of other disciplinary action, the Licensing Authority shall consider the following criteria:
1. The nature of the deficiency;
 2. Whether the deficiency can be corrected;
 3. Whether the licensee and its affected staff understand the deficiency and show a willingness and ability to participate in corrective action;
 4. The length of time required to implement corrective action;
 5. Whether the same or similar deficiencies have occurred on prior occasions;
 6. Whether the licensee has had prior corrective action plans, and, if so, the licensee's success in achieving the required goals of the plan;
 7. The licensee's history in providing care; and
 8. Other similar or comparable factors demonstrating the licensee's ability and willingness to follow through with a corrective action plan and avoid future deficiencies.
- C.** The agency shall prepare a corrective action plan for the review and approval of the Licensing Authority.
1. The plan shall explain:
 - a. How the agency will remedy the non-compliance;
 - b. The time periods for completing all corrective action; and
 - c. The agency staff responsible for carrying out the corrective action plan.
 2. The plan shall provide for the agency to send the Licensing Authority periodic reports on the agency's progress, and a final report when all corrective action is completed.
 3. An authorized representative of the agency shall sign and date the corrective action plan.
- D.** In deciding whether to approve a plan, the Licensing Authority shall ensure that the plan:
1. Will correct the identified deficiency within a specified period of time;
 2. Identifies persons responsible for executing the steps listed in the plan; and
 3. Permits the Licensing Authority to monitor the Licensee's progress in completing the plan.
- E.** The Licensing Authority may conduct announced and unannounced inspections of the agency or facility to monitor implementation of a corrective action plan. The licensee shall cooperate in any monitoring inspection as prescribed in R6-5-7416(C).

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997
(Supp. 97-2).

R6-5-7419. Provisional License

- A.** If an agency or a facility is temporarily unable to conform to the standards prescribed in this Article, the Licensing Authority may issue a provisional license to the agency, or convert a regular license to provisional status, as prescribed in A.R.S. § 8-505(C). For the purpose of this Section, "temporarily unable" means a time period of six months or less.
- B.** The Licensing Authority may impose provisional license status on an agency operating multiple facilities even though less than all facilities are out of compliance.
- C.** The Licensing Authority may issue a provisional license only when:
 - 1. The non-compliance is correctable; and
 - 2. The non-compliance does not jeopardize the health, safety, or well-being of children in care.
- D.** If the Licensing Authority issues a provisional license, the agency shall cooperate with the Licensing Authority to develop a written corrective action plan that meets the requirements of R6-5-7418(C) and (D) and shall comply with the terms of the plan.
- E.** If an agency receives a provisional license at the time of annual renewal and the license is later converted to a regular license during the agency's licensing year, the regular license expires one year from the date the provisional license was issued.
- F.** If an agency receives a regular license at the time of annual renewal, and the license is converted to a provisional license during the agency's licensing year, the agency's license expires one year from the date the regular license was issued.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997
(Supp. 97-2).

R6-5-7420. Denial, Suspension, and Revocation of a License or Operating Certificate

- A.** The Licensing Authority may deny, suspend, or revoke a license or operating certificate when:
 - 1. An applicant or licensee has violated or is not in compliance with licensing rules and standards, Arizona state or federal statutes, or city or county ordinances or codes;
 - 2. An applicant or licensee refuses to cooperate with the Licensing Authority in providing information required by these rules or any information required to determine compliance with these rules;
 - 3. An applicant or licensee misrepresents or fails to disclose information to the Department regarding qualifications, experience, or performance of duties;
 - 4. A licensee fails to cooperate in developing a corrective action plan after a request by the Licensing Authority, or fails to comply with a corrective action plan; or
 - 5. An applicant or licensee is unable or unwilling to meet the physical, emotional, social, educational, or psychological needs of children in care.
- B.** In determining whether to deny a license, to take disciplinary action against a licensee, or to renew a license, the Licensing Authority may consider the licensee's past history from other licensing periods, both in Arizona and in other jurisdictions, and shall consider a pattern of violations of applicable child welfare statutes or rules, as evidence that an applicant or

licensee is unable or unwilling to meet the physical, emotional, social, educational, or psychological needs of children.

- C. The Licensing Authority shall deny, suspend, or revoke a license when an individual applicant or licensee has been convicted of or is awaiting trial on the criminal offenses listed in A.R.S. § 46-141.
- D. The Licensing Authority shall deny, suspend, or revoke a license when an agency or facility:
 - 1. Retains staff who have been convicted of or are awaiting trial on the criminal offenses listed in A.R.S. § 46-141;
 - 2. Allows an adult other than those described in subsection (D)(1), who has been convicted of or is awaiting trial on the offenses listed in A.R.S. § 46-141, to reside at a facility; or
 - 3. Allows any staff or other adult at the facility, who has committed an offense listed in A.R.S. § 46-141(D), to have contact with children in care.
- E. The Licensing Authority may deny, suspend, or revoke a license when an applicant or licensee, any staff member, or any other adult who resides at the facility, has been convicted of or found by a court to have committed, or is awaiting trial on any criminal offense, other than those listed in A.R.S. § 46-141. In determining whether a person's criminal history affects an applicant's or licensee's fitness to hold a license, the Licensing Authority shall consider all relevant factors, including the following:
 - 1. The extent of the person's criminal record, if any;
 - 2. The length of time which has elapsed since the offense was committed;
 - 3. The nature of the offense and whether the offense was originally classified as a felony or a misdemeanor;
 - 4. The circumstances surrounding the offense;
 - 5. The degree to which the person participated in committing the offense;
 - 6. The extent of the person's rehabilitation; and
 - 7. The person's role within the agency or facility.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997
(Supp. 97-2).

R6-5-7421. Adverse Action; Procedures; Effective Date

- A. When the Licensing Authority plans to take adverse action against a licensee, the Licensing Authority shall give the licensee written notice of the adverse action by certified mail.
- B. The notice shall specify:
 - 1. The action taken;
 - 2. All reasons supporting the action;
 - 3. The sections of law justifying the action;
 - 4. The procedures by which an applicant or licensee may contest the action taken, and the time periods for doing so;
 - 5. An explanation of the applicant or licensee's right to request an informal settlement conference as prescribed in A.R.S. § 41-1092.03(A); and
 - 6. If the Licensing Authority summarily suspends a license as provided in A.R.S. § 41-1064(C), the required finding of emergency.
- C. The following actions are not appealable adverse actions:
 - 1. Imposition of a corrective action plan to bring the licensee into compliance with licensing requirements, absent any material change in licensing status;

2. Denial or revocation of permission for an alternate method of compliance or operation of a barracks facility as prescribed in R6-5-7461(B) and R6-5-7462(B); and
 3. A staff member's failure to clear the criminal history check prescribed in R6-5-7431(B).
- D.** Except as otherwise provided in A.R.S. § 41-1064 for emergency suspensions, adverse action is effective:
1. If a licensee does not appeal the adverse action, 31 days after the postmark date of the notice prescribed in subsection (A); or
 2. If the licensee appeals the adverse action, when there is a final administrative decision, as prescribed in A.R.S. § 41-1092.08(D), affirming the adverse action.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997
(Supp. 97-2).

R6-5-7422. Appeals

- A.** An applicant may appeal the denial of a license and a licensee may appeal adverse action under A.R.S. § 8-506.01 and A.R.S. Title 41, Chapter 6, Article 10.
- B.** The applicant or licensee shall file a notice of appeal with the Licensing Authority. The notice shall contain the information required by A.R.S. § 41-1092.03(B).

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997
(Supp. 97-2).

R6-5-7423. Statement of Purpose; Program Description and Evaluation; Compliance With Adopted Policies; Client Rights; Single Category of Care

- A.** A licensee shall have a written statement which describes its philosophy, purpose, and program for children in care, and the nature and extent of any family involvement in the program.
- B.** A licensee shall have a written description of all services each facility provides to children in care and their families and the methods of service delivery.
- C.** A licensee shall follow all plans, policies, and procedures the licensee adopts in accordance with this Article.
- D.** A licensee shall annually evaluate whether a facility is achieving the objectives described in R6-5-7405(A)(5)(c)(i). The licensee shall make a written report of the evaluation and provide a copy to the Licensing Authority at the time of license renewal.
- E.** A licensee shall have a statement of client rights.
- F.** A licensee shall not combine its child welfare program, as defined pursuant to subsection (A), with other forms of care or programming such as child care, nursing or convalescent care for adults, or adult developmental care unless the licensee:
1. Physically separates children in the child welfare program from persons in other programs, and
 2. Prevents interaction between children in the child welfare program and persons in other programs.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997
(Supp. 97-2).

R6-5-7424. Governing Body

- A. A licensee shall have a governing body to oversee the operations, policies, and practices of the agency and its facilities. The governing body shall be:
 - 1. The board of directors for an agency that is a non-profit corporation, or
 - 2. The board of directors or individual owner of an agency that is a for-profit organization.
- B. The governing body shall:
 - 1. Ensure that the licensee provides the services described in the licensee's statement of purpose;
 - 2. Adopt an annual budget of anticipated income and expenditures necessary to provide the services described in the licensee's statement of purpose;
 - 3. Approve the licensee's annual financial audit report;
 - 4. Establish a policy and procedure for selection and retention of staff sufficient to operate the agency and its facilities in accordance with this Article;
 - 5. Unless the licensee is a sole proprietorship, meet at least four times each year, and maintain records of attendance and minutes of the meetings;
 - 6. Develop criteria and written procedures for selection of the governing body members, and the chief executive officer as required by R6-5-7432(A);
 - 7. Employ a chief executive officer who meets the qualifications prescribed in R6-5-7432(A), to whom the governing body shall delegate responsibility for the daily administration and operation of the agency;
 - 8. Regularly evaluate the chief executive officer's performance; and
 - 9. Review and approve the agency's policies and procedures, and any amendments to them.
- C. A licensee shall maintain a list of the governing body's members; the list shall include each member's the name, address, term of membership, and relationship to the licensee, if any.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997
(Supp. 97-2).

R6-5-7425. Business and Fiscal Management; Annual Audit

- A. A licensee shall maintain complete and accurate accounts, books, and records as prescribed in this Article, and in accordance with generally accepted accounting practice.
- B. A licensee shall operate on the annual budget approved by its governing board.
- C. A licensee shall regularly record its financial transactions and maintain, for five years, its financial records including receipts, disbursements, assets, and liabilities.
- D. A licensee shall have an annual, fiscal year-end, financial audit by an independent certified public accountant who shall conduct the audit in accordance with generally accepted auditing standards. The audit report shall include the following financial information:
 - 1. Income statement,
 - 2. Balance sheet,
 - 3. Statement of cash flow,
 - 4. A statement showing monies or other benefits the licensee has paid or transferred to any of the following:
 - a. Business entities affiliated with the licensee,
 - b. The licensee's directors or officers,
 - c. The licensee's chief executive officer or program director,
 - d. The family member of a person listed in subsections (D)(2)(e)(ii) or (iii), or
 - e. Another agency.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997
(Supp. 97-2).

R6-5-7426. Insurance Coverage

A licensee shall have insurance coverage that provides protection against financial loss as prescribed in this Section.

1. The licensee shall carry liability insurance covering accidents, injuries, errors and omissions in the minimum amount of \$100,000 per person, and \$300,000 per accident or event.
2. The licensee shall ensure that any vehicle the licensee owns or uses to transport children in care has the following insurance coverage:
 - a. Injury per person: \$100,000,
 - b. Injury per accident: \$300,000, and
 - c. Property damage: \$25,000.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997
(Supp. 97-2).

- A. Except as otherwise allowed by law, a licensee's records concerning children in care and their families are confidential, and the licensee shall not disclose or knowingly permit the disclosure of confidential information.
- B. A licensee shall have written policies and procedures for keeping records secure, in a manner that preserves confidentiality and prevents loss, tampering, or unauthorized use. The policies and procedures shall:
 1. Be consistent with any laws applicable to the specific records at issue; and
 2. Cover the following:
 - a. The form in which children's records are maintained and stored;
 - b. Identification of the staff who:
 - i. Supervise the maintenance of records,
 - ii. Have custody of records, and
 - iii. Have access to records;
 - c. The persons to whom records may be released and under what circumstances records may be released, including release of information to custodial and non-custodial parents and guardians;
 - d. Photography, audio or audio-visual recording, and public identification of children; and
 - e. Participation of children or use of children's records in data research.
- C. Before using personally identifiable information for publicity, fundraising, or research, a licensee shall obtain:
 1. A written consent to release, as prescribed in subsection (E), from the child who is the subject of the information, if developmentally appropriate; and
 2. A written consent to release, as prescribed in subsection (E), from the child's placing agency or person; or
 3. Written authorization from the court, if the child is a ward of the court.

- D. A licensee may release personally identifiable information about a child or family to persons who require the information to treat or provide services to the child unless the release is prohibited by law.
- E. A consent to release shall include the following information:
 - 1. The name of the person or agency to whom the information is to be released;
 - 2. A description of the information to be disclosed;
 - 3. The reason for disclosure;
 - 4. The expiration date of the consent, not to exceed six months from date of signature; and
 - 5. The dated signature of the person authorizing the release.
- F. Notwithstanding any other provision of this Article, in a medical emergency, the licensee shall promptly release information from a child's record to persons who require the information to treat the child.
- G. A licensee may withhold information if, in the judgment of the professional person treating the child, or the agency's program director, the release of information would be contrary to the child's best interests, unless the release is:
 - 1. Ordered by a court,
 - 2. Mandated by federal or state law,
 - 3. Required by the licensee's agreement with the placing agency or person, or
 - 4. Required by the Department to assess the licensee's compliance with the law.
- H. If a licensee withholds information pursuant to subsection (G), the licensee shall:
 - 1. Document, in the child's record, the reason for withholding the information;
 - 2. Advise the person who requested the information that the person may grieve the withholding pursuant to the licensee's internal grievance process adopted in accordance with R6-5-7429.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997
(Supp. 97-2).

R6-5-7428. Children's Records: Contents, Maintenance, Destruction

- A. A licensee shall maintain a current, separate case record for each child in care. The record shall be readily accessible to persons providing services to the child and shall include at least the following information:
 - 1. The name, gender, race, religion, birthdate, and birthplace of the child;
 - 2. The name, address, telephone number, and marital status of the child's parents;
 - 3. The date of admission and source of referral;
 - 4. The name, address, telephone number, and relationship to the child of the person with whom the child was living prior to admission, if other than the child's parent;
 - 5. All documents related to the child's referral and admission of the child to the facility;
 - 6. Documentation of the current custody and legal guardianship of the child;
 - 7. The child's court status, if applicable;
 - 8. Consent forms signed by the placing agency or person at the time of placement, allowing the licensee to authorize necessary medical care, medications, routine tests, and immunizations;
 - 9. Service plans and all reviews, revisions, notes, and updates reflecting the child's and family's goals, and progress towards achievement of goals;
 - 10. A plan for permanent placement of the child;
 - 11. Education records and reports;

12. Vocational training and employment records, if applicable;
 13. Treatment and clinical records and reports; and
 14. The discharge summary required by R6-5-7442(B).
- B.** A licensee shall have the medical records required by R6-5-7455. While the child is in care, the licensee may keep the child's medical records in a location separate from the records described in this Section. If the licensee keeps medical records in a separate location, the child's main record shall identify the location of the medical record.
 - C.** All record entries shall be made in permanent ink or electronically. The licensee shall require personnel to date and legibly sign entries in a child's records.
 - D.** If a licensee maintains a child's records in more than one place, the licensee shall:
 1. Identify, in one location that is readily accessible to inspection by the Licensing Authority, the location of all parts of the record; and
 2. Consolidate all records and notes into one case file, at one location, within 15 days following either:
 - a. A request for consolidation from the Licensing Authority; or
 - b. The date of the child's discharge from the facility.
 - E.** A licensee shall maintain a child's record for the longest of the following time periods:
 1. At least five years after the child's last discharge from the licensee's care;
 2. At least three years after the child's 18th birthday; or
 3. Another time period specified by applicable law or contract.
 - F.** A licensee shall dispose of expired records in a manner that maintains confidentiality.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997
(Supp. 97-2).

R6-5-7429. Grievances

- A.** A licensee shall have a written policy and written procedures governing the receipt, consideration, and resolution of grievances brought to the licensee by children in care and their parents, regarding the licensee's program and care of children. The procedures shall:
 1. Be written in a clear and simple manner that is developmentally appropriate for children in care;
 2. Prohibit reprisal or retaliation against an individual who brings a grievance for the act of bringing the grievance;
 3. Describe a process for fair and expeditious resolution of a grievance; and
 4. Provide a means to tell the grievant about the action taken in response to the grievance.
- B.** A licensee shall maintain written records of grievance decisions for at least 12 months after the resolution.
- C.** The licensee shall maintain a log of grievances filed against the licensee. The licensee may keep a centralized agency log, or can maintain a separate log for each facility. The log shall include the following information:
 1. Name of grievant;
 2. Date grievance filed;
 3. Description of the substance of the grievance;
 4. Summary of the grievance resolution;
 5. A copy of the grievance decision required by subsection (B), or a description of where the Licensing Authority can find the decision.
- D.** Copies of the grievance decisions may serve as the grievance log if:

1. The copies are kept in one central location that is readily accessible to the Licensing Authority,
2. The grievance decisions contain all the information listed in subsection (C), and
3. The licensee retains the decisions for at least three years following the date of grievance resolution.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2). Numbering for subsections (C) and (D) amended to correct typographical errors (Supp. 00-3).

R6-5-7430. Staff Management and Staff Records

- A.** A licensee shall have written staff policies and procedures which shall describe:
 1. How the licensee recruits, screens, hires, supervises, trains, retains, develops, evaluates, disciplines, and terminates staff;
 2. How the licensee handles staff resignations;
 3. A job title, description and minimum qualifications for each position within the agency and all facilities;
 4. The duties assigned to each position;
 5. How the licensee handles staff grievances;
 6. An organizational chart for the agency and all facilities; and
 7. A method to assure privacy of staff records.
- B.** The licensee shall give all staff a copy of the person's own job description and allow staff access to the licensee's staff policies and procedures.
- C.** A licensee shall maintain a personnel record for all paid staff. The record shall include the following information, if applicable:
 1. Application for employment including previous employment history and educational background;
 2. Reference letters and documentation of phone notes on references that are dated and signed;
 3. Documentation of the highest level of education achieved; the documentation may include a copy of a diploma, equivalence certificate, or record of notes of calls to educational institutions;
 4. Medical examination reports on paid staff as required by R6-5-7431(F);
 5. Medical examination reports on any other adult residing at the facility showing that the adult is free from communicable diseases as required by R6-5-7431(H);
 6. Medical and immunization records on children who reside at the facility but are not in care, as required by R6-5-7431(H);
 7. Copies of applicable professional licenses, credentials, and certifications, as required by R6-5-7431(A);
 8. Documentation of fingerprinting and criminal records clearance as required by A.R.S. § 46-141 and R6-5-7431(B);
 9. Record of all orientation and training received during employment;
 10. Documentation showing that the paid staff member has read and agrees to abide by the facility's behavior management policies and procedures which shall include the dated signature of the paid staff member and a witness;
 11. Documentation showing that the paid staff member has a valid driver's license if the paid staff member transports children;

12. Reports of all performance evaluations;
 13. Documentation of any personnel actions or investigations that result in a written report;
 14. Dates the paid staff member started and separated from employment; and
 15. Reason for separation from employment.
- D.** A licensee shall maintain a personnel record on unpaid staff. The record shall include the following information, if applicable:
1. Application for work or study, including previous employment history and educational background;
 2. Reference letters and documentation of phone notes on references that are dated and signed;
 3. Medical examination reports, as required by R6-5-7431(F);
 4. Copies of applicable professional licenses, credentials, and certifications, as required by R6-5-7431(A);
 5. Documentation of fingerprinting and criminal records clearance as required by A.R.S. § 46-141 and R6-5-7431(B);
 6. Record of all orientation and training received while affiliated with the licensee;
 7. Documentation showing that the person has read and agrees to abide by the facility's behavior management policies and procedures which shall include the dated signature of the person and a witness;
 8. Documentation showing that the person has a valid driver's license if the person transports children;
 9. Reports of all performance evaluations;
 10. Documentation of any personnel actions or investigations that result in a written report;
 11. Dates the person began and ended affiliation with the licensee; and
 12. Reason for ending affiliation with the licensee.
- E.** The licensee shall keep personnel records for at least three years after the staff member's separation from the licensee.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997
(Supp. 97-2).

R6-5-7431. General Qualifications for Staff

- A.** A licensee shall ensure that all staff providing services to children and their families under the licensee's program are currently certified, registered, or licensed as required by state law.
- B.** As prescribed in A.R.S. § 46-141, all staff having direct contact with children, and any persons age 18 or older who live at a facility, excluding children in care, shall be fingerprinted and shall certify on notarized forms provided by the Department whether they:
1. Are awaiting trial on or have ever been convicted of the following criminal offenses in this state or similar offenses in another state or jurisdiction:
 - a. Sexual abuse of a minor;
 - b. Incest;
 - c. First or second degree murder;
 - d. Kidnapping;
 - e. Arson;
 - f. Sexual assault;
 - g. Sexual exploitation of a minor;
 - h. Contributing to the delinquency of a minor;

- i. Commercial sexual exploitation of a minor;
 - j. Felony offenses involving distribution of marijuana or dangerous or narcotic drugs;
 - k. Burglary;
 - l. Robbery;
 - m. A dangerous crime against children as defined in A.R.S. § 13-604.01;
 - n. Child abuse;
 - o. Sexual conduct with a minor;
 - p. Molestation of a child;
 - q. Manslaughter;
 - r. Aggravated assault; and
2. Have ever committed any of the acts listed in subsections (B)(1)(a), (g), (i), (m), (n), (o), and (p).
- C.** A licensee shall not knowingly employ, retain, or allow to reside at a facility, any staff, or person age 18 or above, who is awaiting trial on or has been convicted of any of the criminal offenses listed in subsection (B), or the same or similar offenses in another state or jurisdiction. A licensee shall not knowingly allow a person who has committed any of the offenses listed in subsection (B)(2) to have contact with children in care.
- D.** For all staff, a licensee shall:
1. Verify at least two years immediate, or most recent, past employment through reference checks;
 2. Obtain at least three references from persons not related to the staff member by blood or marriage, who can attest to the staff member's character, knowledge, and skill.
- E.** The licensee shall document verification of the reference information required in subsection (D).
- F.** A licensee shall have staff providing direct care to children obtain a physical examination by a licensed medical practitioner before beginning assigned duties and at least every two years while working.
- G.** All staff shall be free from any communicable disease that poses a danger to children in care and shall have the capacity to perform the essential functions of that person's job.
- H.** Other adults who reside at the facility shall be free from communicable disease that poses a danger to children in care. Children who reside at the facility but are not in care shall have current immunizations and be free from communicable disease that poses a danger to children in care.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997
(Supp. 97-2).

R6-5-7432. Qualifications for Specific Positions or Tasks; Exclusions

- A.** Chief Executive Officer "CEO": A licensee shall have a chief executive officer for the agency. The CEO:
1. Is responsible for general management, administration, and operation of the agency in accordance with this Article;
 2. Ensures that:
 - a. Each child in care receives necessary professional services;
 - b. Appropriately qualified staff render services to children in care; and
 - c. The services are coordinated;

3. Shall have management experience and meet any other qualifications prescribed by the Governing Body;
 4. Shall reside in Arizona;
 5. Shall be accessible to staff, representatives of the Licensing Authority, and other governmental agencies; as used in this subsection, “accessible” means readily available to answer questions and to handle problems or emergencies that arise, either personally or through a chain of command; and
 6. Shall designate a qualified person to perform administrative responsibilities whenever the CEO is inaccessible.
- B. Program Director:** A licensee shall have at least one person who is responsible for development, implementation, and supervision of an agency’s programs and services. This person shall have at least:
1. A master’s degree in social work or a related area of study from an accredited school and at least one year experience in the child welfare or child care services field; or
 2. A bachelor’s degree in social work or a related area of study from an accredited school and two years of experience in the child welfare or child care services field.
- C. Facility Supervisor:** If a licensee operates more than one facility, the licensee shall designate a person to supervise the operations of each facility.
- D. Supervisors:** Any staff member who supervises, evaluates, or monitors the work of the direct care staff shall have at least six months paid child care experience and at least 3 1/2 years of any combination of the following:
1. Paid child care or related experience; or
 2. Post-high school education in social work or a related field.
- E. Direct Care Staff:** A person who supervises, nurtures, or cares for a child in care shall have at least:
1. A high school diploma or equivalency degree and one year experience in working with children; or
 2. One year post-high school education in a program leading to a degree in the field of child welfare or human services.
- F. Program Instructors:** A person who supervises, trains, or teaches children in the performance of a physical activity that poses an unusually high risk of harm, such as archery, river rafting, rock climbing, caving, rappelling, and hang gliding, shall:
1. Be currently certified to perform the activity, if applicable;
 2. Have at least three years of experience related to the activity; or
 3. Have at least three letters of reference attesting to skill and experience in the activity.
- G. CPR and First Aid Certification:** A licensee shall ensure that:
1. Direct care staff are certified in pediatric cardiopulmonary resuscitation (CPR) and in first aid by the American Red Cross, the American Heart Association, or the Arizona Chapter of the National Safety Council within three months of being hired and before caring alone for children in care.
 2. At least one staff member per shift, per facility is currently certified in CPR and first aid.
- H. Multiple Functions:** A licensee may allow one person to perform multiple functions or fill more than one position so long as:
1. The person performing multiple functions is qualified for the jobs held; and
 2. The licensee does not violate the requirements of this Article, including R6-5-7437 governing staff-child ratios.

- I.** Exclusions: The educational requirements set forth in this Section do not apply to persons employed with a licensee on the effective date of this Article. These requirements do apply to:
1. Persons hired as employees after the effective date of this Article; and
 2. Persons who:
 - a. Are employed with a licensee on the effective date of this Article;
 - b. Subsequently separate from that employment; and
 - c. Later seek employment with the same or a different licensee.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2). Amended by final rulemaking at 6 A.A.R. 4032, effective September 29, 2000 (Supp. 00-3).

R6-5-7433. Orientation and Training for Staff

- A.** A licensee shall have a written plan for orientation and training of all staff. The plan shall include a method for the licensee to evaluate whether the person has actually learned the information that was the subject of orientation or training.
- B.** All staff shall receive initial orientation and training before assignment to solo supervision of children. The initial orientation and training shall include:
1. Acquainting staff with the licensee's philosophy, organization, program, practices, and goals;
 2. Familiarizing staff with the licensee's policies and procedures, including those on confidentiality, client and family rights, grievances, emergencies and evacuations, behavior management, preventing and reporting child maltreatment, recordkeeping, medications, infection control, and treatment philosophy;
 3. Training staff in cardiopulmonary resuscitation (CPR) and first aid according to American Red Cross guidelines as prescribed in R6-5-7432(G);
 4. Training staff to do the initial health screening prescribed in R6-5-7438(E)(9); the licensee shall have a licensed medical practitioner provide this training;
 5. Training staff in de-escalation and any physical restraint practices used at the facility by an instructor qualified under this subsection. An instructor is qualified to train staff in de-escalation and physical restraint practices if:
 - a. The instructor has a written curriculum that conforms to the requirements of this Article and state law.
 - b. The classroom instruction provided conforms to the requirements of this Article and state law.
 6. Familiarizing staff with the specific child care responsibilities outlined in the person's job description;
 7. Training staff to recognize expected responses to and side effects of medications commonly prescribed for children in care; and
 8. Training staff in the licensee's emergency admissions process if applicable to the licensee's services.
- C.** The licensee's training plan for ongoing training shall satisfy the requirements of this subsection.
1. A full-time support staff member shall receive at least four hours of annual training.
 2. A full-time direct care staff member shall receive at least 24 hours of annual training.

3. The training shall cover matters related to the person's job responsibilities, and at least the following subjects, as appropriate to the characteristics of the children in care at the facility:
 - a. Child management techniques;
 - b. Discipline, crisis intervention, and behavior management techniques;
 - c. A review of the licensee's policies;
 - d. Health care issues and procedures;
 - e. Maintenance of current certification in CPR and first aid;
 - f. Attachment and separation issues for children and families;
 - g. Sensitivity towards and skills related to cultural and ethnic differences;
 - h. Self-awareness, values, and professional ethics; and
 - i. Children's need for permanency and how the agency works to fulfill this need.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997
(Supp. 97-2). Amended by final rulemaking at 6 A.A.R. 4032, effective September 29,
2000 (Supp. 00-3).

R6-5-7434. Notification of Unusual Incidents and Other Occurrences

- A.** A licensee shall make a record of any unusual incident on an incident reporting form which shall include the following information:
 1. Location of the unusual incident;
 2. Name and address of any child involved in or observing the incident;
 3. Name of the agency if different from the facility;
 4. Name, title, and address of any staff involved in or observing the incident;
 5. Name and address of any other person involved in or observing the incident;
 6. Date of the incident;
 7. Time of the incident;
 8. Description of the incident; and
 9. Licensee's response to the incident.
- B.** The licensee shall maintain a record of all unusual incidents occurring at the facility in a separate log or place, which shall permit the Licensing Authority to easily locate the incident reporting form if the licensee maintains the form in a location separate from the log.
- C.** When a child in care dies, the licensee shall notify the child's placing agency or person, and the Licensing Authority within two hours of knowledge of the death.
- D.** When a child in care suffers a serious illness, serious injury, or a severe psychiatric episode requiring hospitalization, the licensee shall notify the child's placing agency or person within 24 hours of knowledge of the occurrence.
- E.** A licensee shall comply with the statutory obligation to report child maltreatment, as prescribed in A.R.S. § 13-3620.
- F.** A licensee shall comply with any reporting requirements set forth in the licensee's contracts with placing agencies or persons.
- G.** No later than 5:00 p.m. on the next business day, the licensee shall notify the Licensing Authority when any of the following occurs:
 1. Fire or a natural disaster affecting the licensee;
 2. Law enforcement involvement in which a formal complaint is filed by or against the licensee, but excluding incidents of children cited solely for absence without leave from the facility;

3. Any incident of alleged child maltreatment of a child in care;
 4. When a child in care or any other person suffers any injury from use of restrictive behavior management, and which requires treatment by a licensed medical practitioner;
 5. When a child in care suffers any physical injury from an incident involving another child in care and requires treatment by a licensed medical practitioner;
 6. When a child in care suffers an injury or psychiatric episode that is severe enough to require hospitalization or external medical intervention for the child; and
 7. When a child in care requires external emergency services including a suicide watch.
- H.** Within five calendar days, a licensee shall give the Licensing Authority written documentation of an event listed in subsection (G) above. The documentation shall contain at least the information required by subsection (A), and may be a copy of the licensee's unusual incident reporting form.
- I.** If a child in care dies, a licensee shall notify the local law enforcement authority and cooperate in any arrangements for examination, autopsy, and burial.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997
(Supp. 97-2).

R6-5-7435. Investigations of Child Maltreatment

- A.** A licensee shall have written procedures for handling alleged and suspected incidents of child maltreatment, including at least the following provisions:
1. Reporting suspected incidents of maltreatment to law enforcement or Child Protective Services as required by A.R.S. § 13-3620;
 2. Notifying the Licensing Authority, and notifying the child's placing agency or person if so requested;
 3. Taking precautions to prevent further risk to the child who allegedly suffered the maltreatment and potential risk to other children in care;
 4. Evaluating the retention of any staff who commit or allow child maltreatment; and
 5. If the licensee internally investigates incidents, conducting the internal investigation.
- B.** A licensee shall require all staff to read and sign a statement describing the duty to report child maltreatment as prescribed in A.R.S. § 13-3620.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997
(Supp. 97-2).

R6-5-7436. Runaways and Missing Children

A licensee shall have a written policy and procedures for handling runaways and missing children. The policy shall include at least the following:

1. Procedures for making staff who provide services to a child with a history of or potential for running away, aware of that child's history or potential;
2. Procedures for immediately notifying the designated administrator of the child's facility or that person's designee when a child is discovered to be missing;
3. Procedures for notifying the local law enforcement agency, the child's placing agency or person, and others as necessary;
4. Procedures to prevent runaways; and
5. Procedures for submitting a written report to the child's placing agency or person within five days or the time specified in the placement agreement.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997
(Supp. 97-2).

R6-5-7437. Staff Coverage; Staff-child Ratios

- A.** A licensee shall have a written plan to minimize the risk of harm to children. The written plan shall describe the staffing for each facility, for 24 hours per day, seven days per week. The staffing plan shall explain:
1. How staff coverage is assured:
 - a. When assigned staff are absent due to illness, vacation, or other leaves of absence; and
 - b. During emergencies when only one staff member is on duty; and
 2. The methods the licensee uses to assure adequate communication and support among staff to provide continuity of services to children.
- B.** A licensee shall also have a written staffing schedule for each facility shift; the schedule shall document the staff actually on duty during each shift. The licensee shall retain the schedules in one designated location for at least two years.
- C.** A licensee shall have at least the paid staff to child ratios prescribed in this subsection.
1. Age 12 and above:
 - a. At least one paid staff member for each 10 children when children are under the licensee's direct supervision and awake.
 - b. During sleep hours, at least one paid staff member in each building where children in care are sleeping.
 2. Age 6 through 11:
 - a. At least one paid staff member for each eight children when children are under the licensee's direct supervision and awake.
 - b. During sleep hours, at least one paid staff member in each building where children in care are sleeping.
 3. Age 3 through 5:
 - a. At least one paid staff member for each six children when children are under the licensee's direct supervision and awake.
 - b. At least one paid staff member in each building where children in care are sleeping.
 4. Under age 3:
 - a. At least one paid staff member for each five children when children are under the licensee's direct supervision and awake.
 - b. At least one paid staff member for each six children when children are sleeping.
 5. Nonambulatory children, under age 6: At least one paid staff member for each four children at all times.
 6. Young adults:
 - a. At least one paid staff member onsite for each 10 young adults when young adults are under the licensee's direct supervision and awake.
 - b. During sleep hours, at least one paid staff member onsite for each 20 young adults.
- D.** For the purpose of the paid staff-child ratios in subsection (C):
1. Students and volunteers do not count as staff;
 2. A child who lives at the facility is counted as a child, unless the child is not in the care, custody, and control of the state of Arizona, and the child's parent is:
 - a. In care, residing in the same facility; and

- b. Determined to be the child's primary caregiver by;
 - i. The placing agency;
 - ii. A court; or
 - iii. The licensee, when subsections (i) and (ii) do not apply;
- 3. When a child resides with a parent in a facility licensed under this Article, the licensee shall provide, at the Department's request, documentation of:
 - a. The custodial relationship between parent and child; and
 - b. If applicable, the determination that the parent is an acceptable primary caregiver for the child.
- 4. Any paid staff member counted in the ratio shall be someone who is qualified to provide direct child care as prescribed in R6-5-7432(E).
- E.** A licensee shall not fall below the minimum paid staff-child ratios specified in subsection (C), and shall, notwithstanding those ratios, have paid staff:
 - 1. Sufficient to care for children as prescribed in this Article and in the licensee's own program description, statement of purpose, and policies;
 - 2. That take into account the following factors:
 - a. The ages, capabilities, developmental levels, and service plans of the children in care;
 - b. The time of day and the size and nature of the facility; and
 - c. The facility's history and the frequency and severity of unusual incidents, including runaways, sexual acting-out behavior, disciplinary problems, and injuries.
- F.** A licensee shall have sufficient numbers of qualified staff to perform the fiscal, clerical, food service, housekeeping, and maintenance functions prescribed in this Article and in the licensee's own policies.
- G.** A licensee shall make a good faith effort to employ staff who reflect the cultural and ethnic characteristics of the children in care.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2). Amended by final rulemaking at 6 A.A.R. 4032, effective September 29, 2000 (Supp. 00-3). Amended by emergency rulemaking at 12 A.A.R. 2233, effective June 1, 2006 for 180 days (Supp. 06-2). Emergency renewed at 12 A.A.R. 4732, effective November 28, 2006 for 180 days (Supp. 06-4). Amended by final rulemaking at 13 A.A.R. 2049, effective May 21, 2007 (Supp. 07-2).

R6-5-7438. Admission and Intake; Criteria; Process; Restrictions

- A.** Admissions: A licensee shall have a written admissions policy, which shall:
 - 1. Describe the licensee's admission criteria, including:
 - a. Population to be served, including age range, gender, physical development, social behavior, and custody and guardianship status;
 - b. Geographic area of service;
 - c. The needs, problems, and child-related issues best served at the licensee's facility; and
 - d. The method used to assign a child to a particular living unit;
 - 2. Contain an acknowledgment that the licensee abides by the Interstate Compact on the Placement of Children, the Indian Child Welfare Act, and the Interstate Compact on Juveniles; and
 - 3. Provide that the licensee shall not refuse admission to any child on the grounds of race, religion, or ethnic origin.

- B. Age Limit; Continuing Care for Persons in High School:** A licensee shall not admit a person who is age 18 or older, except a licensee may continue to care for an individual under age 22 who was a child in care and turned age 18 while in care, as long as the individual is currently enrolled in and regularly attending a high school program or vocational training program. A licensee shall not allow an individual to remain in care after the individual receives a high school degree or certificate of equivalency, or completes the vocational training program.
- C. Admissions Outside of Criteria:** A licensee shall not accept a child who is not within the licensee's admission criteria unless:
1. The placing agency or person specifically authorizes the admission after reviewing the agency's program description;
 2. The admission is consistent with the terms of the agency's license and will not result in a violation of this Article; and
 3. The child's individual service plan explains:
 - a. The reasons for acceptance, and
 - b. How the facility will meet the child's needs.
- D. Intake Assessment:**
1. A licensee shall not accept a child into care unless:
 - a. The child has a current intake assessment covering the child's social, health, educational, legal, family, behavioral, psychological, and developmental history; or
 - b. The licensee completes such an assessment within seven days following the child's admission.
 2. In this subsection, "current" means within the six months prior to admission.
- E. Admission and Intake Process and Requirements:** The licensee shall have a written policy and procedures describing the process and requirements for both regular and emergency admissions and intake. The policy shall include the provisions listed in this subsection.
1. The licensee shall have a method to allow a child to participate in admission and intake decisions, including selection of a living unit, if developmentally appropriate and consistent with the licensee's program.
 2. The licensee shall provide the placing agency or person with a reasonable opportunity to participate in admission and intake decisions.
 3. Except for emergency admissions as prescribed in subsection (F), the licensee shall not admit a child unless the licensee has, at the time of or prior to admission:
 - a. A written agreement with the child's placing agency;
 - b. A court order; or
 - c. The written consent of the child's custodial parent or guardian.
 4. The licensee shall obtain any available medical information about the child before or at the time of the child's admission. The information may include:
 - a. A report of a medical examination of the child performed within 45 days prior to admission;
 - b. A report of a dental examination of the child performed within six months prior to admission; and
 - c. The child's and family's medical history.
 5. If the information described in subsection (D)(4) is not available, the licensee shall comply with the requirements of R6-5-7452 to obtain an examination.

6. At the time of or prior to admission, the licensee shall obtain written consent from the child's placing agency or person for the licensee to authorize routine medical and dental procedures for the child.
 7. If a child is taking medication at the time of admission, the licensee shall:
 - a. If the medication is in its original container, labeled by the dispensing pharmacist with a fill date, prescribing physician, and instructions for administration, document the receipt of the medication as prescribed in subsection (E)(7)(c); or
 - b. If the medication is not in its original container, or if the container is not labeled as described in subsection (E)(7)(a), contact the prescribing physician to verify the medication administration schedule and reason for the medication; and
 - c. Document the contact in the child's medical record required by R6-5-7455 and the medication administration schedule as prescribed in R6-5-7453(B).
 8. A licensee shall not refill a prescription that a child brings at admission without having a licensed medical practitioner determine the child's need for the medication and documenting the need as prescribed in subsection (E)(7)(c).
 9. Within 24 hours of a child's admission, a direct care staff member who has the training prescribed in R6-5-7433(B)(4), or a licensed medical practitioner, shall assess the child's general health, by:
 - a. Looking at the child for signs of obvious physical injury and symptoms of disease or illness;
 - b. Assessing the child for evidence of apparent vision and hearing problems; and
 - c. Documenting any conditions or problems and referring the child for immediate or further assessment or treatment, if indicated.
- F. Emergency Admissions:** In an emergency situation requiring immediate placement, a licensee shall:
1. Gather as much information as possible about the child and the circumstances requiring placement;
 2. Record this information in the child's record, within two days of admission, as an emergency admission notation; and
 3. Keep an emergency admission record, which shall include at least the following information about the child:
 - a. Physical health,
 - b. Family history,
 - c. Educational background,
 - d. Legal status, and
 - e. A statement explaining the need for care.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997
(Supp. 97-2).

R6-5-7439. Information and Services Provided to the Placing Agency or Person

- A.** No later than the date of a child's admission, a licensee shall provide information about the following subjects to the placing agency or person.
1. The licensee's statement of purpose and program description prescribed in R6-5-7423(A) and (B);
 2. Daily routines at the facility where the child is or will be placed;
 3. The behavior management policies and procedures prescribed in R6-5-7456;

4. Services and treatment strategies provided or used at the facility;
 5. The visitation and communications policy prescribed by R6-5-7448;
 6. The education program or method for providing a child with education;
 7. Any religious practices observed by the licensee or religious observances required of children.
- B.** The licensee may provide the information in summary form or orally, but shall:
1. Convey the information in a language or form that the placing agency or person can understand;
 2. Advise the placing agency or person that the licensee will provide a copy of the licensee's policies or procedures, upon request.
 3. Provide the name and telephone number of a staff person that the placing agency or person may contact to obtain information about the program, facility, or child.
- C.** The licensee shall provide the placing agency or person with a copy of the licensee's grievance procedures required by R6-5-7429 and the statement of client rights required by R6-5-7423(C).
- D.** The licensee shall obtain the dated signature of the placing agency or person indicating receipt of the information listed in subsections (A) through (C).
- E.** Before obtaining the signature of a child's parent or guardian on a contract, consent, or release, the licensee shall explain the contents of the documents.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997
(Supp. 97-2).

R6-5-7440. Orientation Process for a Child In Care

- A.** A licensee shall provide a child admitted into care with the orientation described in this Section in a language and manner that the child can understand and to the extent developmentally appropriate to the child.
- B.** During the first full day of a child's placement, a licensee shall:
1. Explain the facility's emergency procedures,
 2. Show the child where emergency exits are located,
 3. Take the child on a tour of the facility, and
 4. Introduce the child to staff and other residents.
- C.** During the first week following a child's admission and as part of each child's orientation, a licensee shall:
1. Familiarize the child with the licensee's program;
 2. Explain the licensee's expectations and requirements for behavior;
 3. Explain the criteria for successful participation in and completion of or emancipation from the program;
 4. Make available a copy of the behavioral rules prescribed by R6-5-7456(A)(3)(a), (b), (c), (d), and (h);
 5. Make available a copy of the visitation and communication policy prescribed by R6-5-7448; and
 6. Describe and, upon request, make available a copy of the grievance procedures prescribed by R6-5-7429 and the statement of client rights prescribed by R6-5-7423(E).
- D.** The licensee shall document the orientation and other information given to a child in the child's case record.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997
(Supp. 97-2).

R6-5-7441. Child's Service Plan: Preparation; Review; Planning Participants

- A. Service Plan Contents:** A child in care shall have a personalized service plan tailored to the child's unique background, needs, strengths, weaknesses, and problems. The plan shall include at least the following information:
1. A description of services the child is to receive while in care, including services to ready the child for discharge or emancipation from the program;
 2. Goals and objectives for the child;
 3. Timelines for achieving each goal and objective;
 4. Recommendations for any after-care;
 5. Identification of persons invited to participate in service planning;
 6. The names and, if available, signatures of the persons who participated in service planning;
 7. Identification of persons responsible for implementing the service plan, with an explanation of each person's role; and
- B. Timing for Plan Development and Review:**
1. If a child has an existing service plan at the time of admission, the licensee shall:
 - a. Review the plan before or at the time of the child's admission, and
 - b. Assess the existing plan and make any necessary changes to conform to the requirements of this Section.
 2. If a child does not have a service plan at the time of admission, the licensee shall initiate service planning at the time of admission.
 3. Within seven days of a child's admission, a licensee shall document all interim planning efforts identifying the child's needs and initial plans for service.
 4. No later than 30 days after the child's admission to a facility, the licensee shall complete the child's initial service plan and any initial modifications to an existing plan.
- C. Plan Review:** The licensee shall review and update a child's service plan at least every 90 days following completion of the child's service plan described in subsection (B)(4).
- D. Planning Participants:**
1. The licensee shall invite, or delegate the responsibility for inviting, at least the following persons to participate in development of the service plan and periodic review:
 - a. A representative of the facility;
 - b. A representative of the placing agency, if applicable;
 - c. The child, if the child's presence is developmentally appropriate; and
 - d. The child's parent or guardian.
 2. At least one participant on the service team shall have the qualifications listed in R6-5-7432(B)(1) or (2).
- E. Methods of Participation:** The licensee shall allow service team members to participate in service planning through the following methods:
1. Attendance at a planning meeting,
 2. Submission of a written report or documentation,
 3. Review and approval of the plan through signing and dating, or
 4. Audio or audio-visual teleconference.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997
(Supp. 97-2).

R6-5-7442. Discharge; Discharge Summary

- A.** Policy and Procedure: A licensee shall have written policy and procedures for planned and unplanned discharges of children.
1. Before a child's planned discharge, the licensee shall explain the discharge plan to the child and help the child understand the plan.
 2. The licensee shall also explain the discharge plan to the person removing the child.
 3. Before discharging a child to another out-of-home placement, the licensee shall make a reasonable effort to:
 - a. Arrange for the service team to meet or communicate with a representative from the new placement to share information about the child; and
 - b. Arrange for the child to visit the new placement.
- B.** Discharge Summary: Within 15 days of the date a child is discharged, the licensee shall complete a written discharge summary which shall include the following information:
1. The name, address, telephone number, and relationship of the person to whom the child was discharged;
 2. The planned and actual discharge dates;
 3. A summary of the contacts between the licensee and the facility or person to whom the child was discharged about the child's pending discharge;
 4. A summary of services provided during care;
 5. A list of medication provided during care, with a summary of the reasons for prescribing the medication and any outcomes of the medication;
 6. A summary of progress toward service plan goals;
 7. An assessment of the child's unmet needs and alternative services which might meet those needs;
 8. Any after-care plan and identification of any person or agency responsible for follow-up services and after-care; and
 9. For an unplanned discharge, a description of the circumstances surrounding the unplanned discharge, including the licensee's actions.
- C.** Notice of Unplanned Discharge: When a child's placing agency or person has not participated in the decision to discharge the child, the licensee shall notify the placing agency or person within one hour of discharge, or document attempts at notification.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997
(Supp. 97-2).

R6-5-7443. Personal Care of Children

- A.** A licensee shall provide children in care with:
1. Developmentally appropriate supervision, assistance, and instruction in, good habits of personal care and hygiene and culturally appropriate grooming;
 2. Necessary toiletry items; and
 3. The opportunity to have a daily shower or tub bath in private, as developmentally appropriate, or as otherwise prescribed in program policy.

- B. A licensee shall not allow community use of grooming and hygiene articles such as towels, toothbrushes, soap, hairbrushes, and deodorants.
- C. If a licensee restricts personal care or grooming practices, the licensee shall have a policy describing the restrictions and the reasons for the restrictions.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997
(Supp. 97-2).

R6-5-7444. Children's Clothing and Personal Belongings

- A. A child may bring clothing and personal belongings to the facility and acquire belongings while in care, in accordance with the child's service plan and the facility's policy.
- B. If a licensee limits a child's right to have, wear, or display certain clothes or personal belongings, the licensee shall:
 - 1. Have a written policy explaining the limitations and the reasons for the limitations; and
 - 2. Explain the limitations to the child in a form and manner that the child can understand.
- C. When a child is admitted, the licensee shall inventory the child's clothing and personal belongings; the licensee shall provide a copy of the inventory to the placing agency or person and keep a copy in the child's file.
- D. The licensee shall either store any restricted possessions or return the possessions to the child's placing agency or person.
- E. The licensee shall ensure that each child has a personal supply of clean and seasonable clothing as required for health, comfort, and physical well-being and as appropriate to the child's age, gender, size, and individual needs.
- F. The licensee shall allow a child to help select his or her own clothing when developmentally appropriate and allowed by programmatic requirements.
- G. The licensee shall have a policy governing retention, return, and disposal of the clothes and personal belongings of a child who has had an unplanned discharge. At the time of a child's planned discharge, the licensee shall allow the child to take clothing and personal belongings.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997
(Supp. 97-2).

R6-5-7445. Children's Money; Restitution

The licensee shall provide opportunities for children to develop a sense of the value of money through allowances, earnings, spending, giving, and saving. Any practices regarding children's money shall comply with this Section.

- 1. The licensee shall have a written policy regarding allowances.
- 2. The licensee shall treat a child's money as that child's personal property.
- 3. The licensee may limit the amount of money to which a child may have access when the limitations are:
 - a. In the child's best interest and explained in the child's service plan; or
 - b. In accordance with the facility's program description.
- 4. The licensee shall not deduct sums from a child's allowance as restitution for damages caused by the child unless:
 - a. The licensee has discussed restitution with the child; and
 - b. The deduction is:
 - i. Reasonable in amount,

- ii. Consistent with the child's ability to pay,
 - iii. In accordance with the licensee's policy, and
 - iv. Explained in the child's service plan.
5. The licensee shall maintain individual accounting records for the money of each child.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997
(Supp. 97-2).

R6-5-7446. Nutrition, Menus, and Food Service

- A. A licensee shall have a written, dated menu of planned meals. The menu shall be available at the facility at least one week before meals are served. The licensee shall post the weekly menu in the dining area or in a location where children may review it. The licensee shall keep a copy of the menu and any menu substitutions on file for one year.
- B. The licensee shall prepare and serve meals in compliance with the written, dated menus.
- C. A registered nutritionist or dietitian shall either prepare or approve the licensee's menus. The licensee shall maintain a record of any approvals for one year, and keep the record in a central location at the agency or facility.
- D. A licensee shall develop and follow a specialized menu for a child with special nutritional needs. The licensee shall make special menus available to nutritional staff, but shall not post special menus in an area that is readily seen by other children in care.
- E. Menus shall reflect the religious, ethnic, and cultural differences of children in care.
- F. When developmentally appropriate, a licensee shall allow children to make menu suggestions.
- G. A licensee shall provide each child with at least three meals daily, with no more than 14 hours between the evening and morning meals. Between meal snacks shall not replace regular meals.
- H. A licensee shall provide meal portions that are consistent with each child's caloric needs.
- I. A licensee shall serve children meals that are substantially the same as those served to staff unless special dietary needs require differences in diet.
- J. A licensee shall allow children to eat at a reasonable rate; unless otherwise prescribed in agency policy, staff shall encourage social interaction and conversation during meals.
- K. A licensee shall have potable water available at all times.
- L. Staff shall directly supervise children involved in food preparation.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997
(Supp. 97-2). Amended by final rulemaking at 6 A.A.R. 4032, effective September 29,
2000 (Supp. 00-3).

R6-5-7447. Sleeping Arrangements

A licensee shall comply with the sleeping arrangement provisions in this Section.

- 1. A child age 6 or older shall not share a bedroom with a child of the opposite gender.
- 2. A child shall not share a bedroom with an adult unless one of the conditions listed in this subsection is met.
 - a. The child is younger than age 3.
 - b. The child's service plan contains specific reasons and authorization from the placing agency or person for a shared bedroom.

- c. The child has a temporary need for special adult care during sleeping hours and the need is documented in the child's service plan.
 - d. The child has regularly shared a bedroom with another child in the licensee's care; the other child has reached age 18; and the placing agency and licensee agree that continuing the shared arrangement is in the best interests of both the child and the adult.
 - e. The child is sharing a room with his or her parent.
 - f. The sleeping area at the facility is a barracks that has been approved as described in R6-5-7461(B) and R6-5-7462(B), and a paid staff member sleeps in the same room to supervise the children in care.
- 3. Only children age 8 or older may sleep on the upper bed of a bunk bed.
 - 4. If a child has a documented record of behavior that poses a risk to other children in care, the licensee, in consultation with the placing agency or person, shall develop special sleeping arrangements for that child, to minimize the risk of harm to other children. The licensee shall document the arrangements in the child's service plan.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2). Amended by emergency rulemaking at 12 A.A.R. 2233, effective June 1, 2006 for 180 days (Supp. 06-2). Emergency renewed at 12 A.A.R. 4732, effective November 28, 2006 for 180 days (Supp. 06-4). Amended by final rulemaking at 13 A.A.R. 2049, effective May 21, 2007 (Supp. 07-2).

R6-5-7448. Visitation, Outings, Mail, and Telephones

- A.** The licensee shall have a written policy and procedures regarding visitation, mail, telephone calls, and other forms of communication between children and family, friends, and other persons. The policy and procedures shall conform to the requirements of this Section.
 - 1. The licensee shall allow a child reasonable privacy during a visit unless the child's service plan requires supervised visitation.
 - 2. A licensee shall have facility visiting hours which meet the needs of the children and their parents.
 - 3. A licensee shall not deny, monitor, or restrict a child's communication with the child's social worker, attorney, Court Appointed Special Advocate, guardian ad litem, or clergy. The licensee may establish a schedule and rules for communication to prohibit undue interference with programming.
 - 4. A licensee shall not deny, monitor, or restrict communications between a child and the child's parent, guardian, or friends except as prescribed:
 - a. By court order;
 - b. In the child's service plan, which shall contain specific treatment reasons for the restriction which shall be time limited; or
 - c. In the facility's policy and statement of purpose required by R6-5-7423.
 - 5. The licensee may require a child to open mail in the presence of staff in order to inspect the mail for contraband.
 - 6. When a licensee is monitoring a communication as allowed in subsection (A)(4) above, the licensee shall tell the parties to the communication about the monitoring.
- B.** The licensee shall have written policy and procedures to govern situations when a child temporarily leaves the facility on a visit or outing with a person other than a staff member. The procedures shall include:

1. A method for recording the child's location, the duration of the activity, and the anticipated and actual time of the child's return;
 2. The name, address, and telephone number of the person responsible for the child while the child is absent from the facility; and
 3. A procedure for action if a child fails to return.
- C. Subsection (B) does not apply to regularly scheduled trips to school.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997
(Supp. 97-2).

R6-5-7449. Educational and Vocational Services; Work Assignments

- A. The licensee shall have a written policy regarding its educational program or a plan for ensuring that each child attends an educational program in accordance with state and local laws.
- B. Within 10 local school days of a child's admission to a facility, the licensee shall arrange for the educational needs of the child. The arrangements shall:
 1. Meet the child's individual needs;
 2. Be consistent with the child's Individual Education Plan (I.E.P.) if applicable; and
 3. Comply with federal and state education laws.
- C. The licensee shall communicate with staff at an educational program in which a child in care is enrolled to discuss the child's progress. At a minimum, the licensee shall attend scheduled parent-teacher conferences.
- D. If a child's service plan provides for the child to receive vocational services, the licensee shall comply with the plan requirements.
- E. The licensee shall provide children in care with:
 1. Space for quiet study;
 2. Developmentally appropriate supervision and assistance with homework; and
 3. Access to necessary reference materials.
- F. The licensee may use work assignments to provide an instructional experience for children in care, but shall not use a child as an unpaid substitute for staff.
- G. A work assignment shall be developmentally appropriate for a child, and scheduled at a time that does not interfere with other routine activities such as school, homework, sleep, and meals.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997
(Supp. 97-2).

R6-5-7450. Recreation, Leisure, Cultural Activities, and Community Interaction

- A. A licensee shall have a written plan for making a variety of cultural, religious, indoor and outdoor recreational and leisure opportunities available for children in care. The plan shall:
 1. Reflect the interests and needs of the children in care, including an allotment of time for children to pursue individual interests, and time to address the special needs of the children in the living unit;
 2. Provide for use of community resources such as schools, museums, libraries, parks, recreational facilities, and places of worship; and
 3. Specify procedures for children's participation in community activities and use of community resources.

- B. A licensee shall help children in care learn about the community in which the facility is located and use community resources, as developmentally appropriate.
- C. A licensee shall arrange transportation and supervision so that children in care can attend community activities and maximize use of community resources.
- D. The licensee shall make available recreational equipment that is suitable to the size, age, and developmental level of children in care.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997
(Supp. 97-2).

R6-5-7451. Religion, Culture, and Ethnic Heritage

- A. A licensee shall have a written description of:
 - 1. Its religious orientation, if any;
 - 2. Any religious practices observed at a facility;
 - 3. Any restrictions on admission based on religion; and
 - 4. How the licensee provides opportunities for each child to participate in religious activities in accordance with the faith of the child or the child's parent or guardian.
- B. A licensee's program and the service plans of children in care shall reflect consideration of and sensitivity to the racial, cultural, ethnic, and religious backgrounds of children in care.
- C. A licensee may encourage children to participate in religious, cultural, and ethnic activities but shall not require children to participate unless otherwise provided in the licensee's statement of purpose and program description.
- D. If a child asks to change religious affiliation while in care, the licensee shall obtain the written permission of the child's parent or guardian before assisting the child in making the change. A licensee is not required to obtain this permission if a child changes religious affiliation without the licensee's assistance.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997
(Supp. 97-2).

R6-5-7452. Medical and Health Care

- A. General health care.
 - 1. A licensee shall have a written plan for meeting the preventive, routine, and emergency physical and mental health needs of children in care. The plan shall identify where and from whom children at a facility may obtain qualified health care, 24-hours per day, seven days per week.
 - 2. A licensee shall ensure that children in care receive:
 - a. Preventive health services, including routine medical examinations and dental cleanings and examinations; and
 - b. The following health services, if necessary:
 - i. Evaluation and diagnosis,
 - ii. Treatment, and
 - iii. Consultation.
 - 3. A licensee shall ensure that a child in care receives a developmentally appropriate explanation of any health treatment the child receives, in a language and manner the child can understand.

4. A licensee shall not ignore a child's complaints of pain or illness and shall document persistent complaints and any actions taken in response to the complaints.

B. Medical care.

1. A licensee shall arrange for a physician, physician's assistant, or nurse practitioner to give a child a medical examination within one week of the child's admission unless:
 - a. A licensed medical practitioner examined the child within the 45 days preceding the child's admission; and
 - b. The licensee has a report of the examination as prescribed in R6-5-7438(E)(4)(a).
2. A licensee shall also arrange for a child in care to receive an annual medical exam from a physician, physician's assistant, or nurse practitioner.
3. The initial and annual medical examinations shall include:
 - a. Screening for communicable disease unless restricted by law;
 - b. Vision and hearing screening; and
 - c. For children who wish to participate in sports or physically strenuous activities such as backpacking, an evaluation of the child's capacity to participate.
4. A licensee shall obtain a report of the examination, and, if applicable, a statement signed by the medical practitioner conducting the examination, or the practitioner's designee, regarding the child's capacity, fitness, and clearance to participate in sports or physically strenuous activities.
5. After attempting to determine a child's immunization history, a licensee shall arrange for the child to receive any routine immunizations and booster shots within 30 days of admission.

C. Dental care.

1. A licensee shall arrange for each child to have a dental examination within 60 days of admission unless the licensee is provided the written results of a dental examination conducted within six months prior to admission.
2. A licensee shall arrange for each child age 3 and older to receive a dental examination every six months.
3. In cooperation with the placing agency or person, a licensee shall arrange for a child to receive any prescribed dental care.

D. First aid. A licensee shall equip the residence of each living unit with at least the following first aid supplies:

1. Adhesive strip bandages;
2. Sterile, individually wrapped gauze squares;
3. Roller gauze;
4. Adhesive tape;
5. Individually wrapped non-stick sterile pads;
6. A triangular bandage to be used for a sling;
7. Disposable latex gloves;
8. A pair of scissors;
9. A pair of tweezers; and
10. A cardiopulmonary resuscitation mouth guard or mouth shield.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7453. Medications

- A.** A licensee shall have written policies and procedures governing medications. The policies and procedures shall specify:
1. The conditions under which medications can be prescribed and administered which shall be in accordance with any applicable laws;
 2. The qualifications of the persons allowed to administer medications;
 3. The qualifications of persons allowed to supervise self-administration of medication;
 4. How a facility will document the prescription and administration of medication, medication errors, and drug reactions; and
 5. How staff will notify a child's attending physician in cases of medication errors and drug reactions.
- B.** The licensee shall have a written medication schedule for each child who receives medication. The schedule shall include the following information:
1. Child's name;
 2. Name of the prescribing physician;
 3. Telephone number at which the prescribing physician can be reached in case of medical emergency;
 4. Reason for prescribing the medication;
 5. Date on which the medication was prescribed;
 6. Generic or commercial name of the medication;
 7. Dosage level and time of day when medication is to be administered, including any special administration instructions;
 8. The date, time, and dosage administered; and
 9. The signature of the person administering each dosage. If the medication is self-administered, the chart shall include the signature of the child and the person supervising the child's self-administration.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997
(Supp. 97-2).

R6-5-7454. Storage of Medications

A licensee shall store medications as prescribed in this Section.

1. Medications shall be kept in securely locked spaces that are not used for any other purpose and to which children do not have access.
2. All medications requiring refrigeration shall be stored separately from food items, in a locked container, in a refrigerator and under temperature ranges recommended by the manufacturer.
3. All prescription medication shall be kept in its original container which shall have a label with the following information:
 - a. Child's name;
 - b. Name of the medication;
 - c. Prescribing physician;
 - d. Date of purchase and, if known, expiration date; and
 - e. Directions for administering.
4. All over-the-counter medication shall be kept in its original container with the manufacturer's label.
5. At least once every 90 days, the licensee shall dispose of all:

- a. Outdated medications;
- b. Medications for children no longer at the facility; and
- c. Medications specifically prescribed for an illness from which a child has recovered.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997
(Supp. 97-2).

R6-5-7455. Children's Medical and Dental Records

A licensee shall maintain health records for each child. The records shall include the information listed in this Section if available to the licensee.

1. The child's past medical history of:
 - a. Immunizations,
 - b. Serious illness or injuries,
 - c. Surgeries,
 - d. Known allergies, and
 - e. Adverse drug reactions.
2. Developmental history.
3. Medication history.
4. History of any alcohol or substance abuse and treatment.
5. Immunizations provided while in care.
6. Medications received while in care and a record of any medication errors.
7. Copies of consents for treatment or care.
8. Authorization to participate in sports or physically strenuous activities, if applicable.
9. Reports of vision and hearing screening and physical and dental examinations.
10. Record of any treatment provided for specific illness or medical emergencies, including the name and location of medical personnel who provided treatment.
11. The name of the person or agency bearing financial responsibility for the child's health care.
12. Documentation showing the licensee's efforts, consistent with the terms of the placing agreement, to obtain glasses, hearing aids, prosthetic devices, corrective physical or dental devices, or any other health equipment recommended by a child's attending physician.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997
(Supp. 97-2).

R6-5-7456. Behavior Management

- A.** A licensee shall have written behavior management policies and procedures which shall:
1. Be developmentally appropriate for the children in care;
 2. Be designed to encourage and support the development of self-control;
 3. Describe the following:
 - a. Behavior expectations of children;
 - b. Consequences for violations of the licensee's policies and rules which shall be:
 - i. Reasonably related to the violation; and
 - ii. Administered without prolonged and unreasonable delay;
 - c. Physical restraint and restrictive behavior management techniques used by the licensee;

- d. The kinds of behaviors warranting use of physical restraints or restrictive behavior management techniques;
 - e. The licensee's methods of documenting use of physical restraints or restrictive behavior management techniques;
 - f. Behavior management techniques which require supervisory authorization or written documentation before being used;
 - g. The licensee's process for supervisory review to evaluate whether staff properly applied the restraints or techniques in a particular case; and
 - h. Behavior management techniques prohibited by the licensee.
- B.** The licensee's staff are responsible for control and discipline of children in care. The licensee shall not allow children to discipline other children.
- C.** The licensee shall not threaten a child or allow any child to be subjected to maltreatment, abuse, neglect, or cruel, unusual, or corporal punishment, including the following practices:
- 1. Spanking or paddling a child;
 - 2. All forms of physical violence inflicted in any manner upon the body;
 - 3. Verbal abuse, ridicule, or humiliation;
 - 4. Deprivation of shelter, bedding, food, water, clothing, sufficient sleep, or opportunity for toileting;
 - 5. Force-feeding, except as prescribed by a licensed medical practitioner;
 - 6. Placing a child in seclusion;
 - 7. Requiring a child to take a painfully uncomfortable position, such as squatting or bending for extended periods of time; and
 - 8. Administration of prescribed medication or medication dosage without specific physician authorization.
- D.** To determine whether a licensee has violated subsection (C)(7), the Licensing Authority shall consider all the circumstances at the time of the action, including the following:
- 1. The child's physical condition;
 - 2. Whether the child was taking any medications that may have affected the child's ability to perform the action, such as psychotropic medications or antibiotics;
 - 3. The climatic conditions under which the child was performing the action, such as intense heat or cold, rain, or snow;
 - 4. The level of force, if any, the licensee used to require the child to perform the activity and whether any use of force resulted in injury to the child; and
 - 5. Whether the activity was consistent with the licensee's program description and procedures.
- E.** The behavior management practices listed in this subsection are restricted. A licensee may use a restricted practice only when the licensee satisfies the conditions listed in subsection (F) and any additional conditions listed in this subsection.
- 1. Required physical exercises such as running laps or performing push-ups, and assignment of physically strenuous activities, except:
 - a. As expressly prescribed in a child's service plan and as part of a regular physical conditioning program, or as part of a work experience that meets the requirements of R6-5-7449(F) and (G);
 - b. With documented clearance by a physician who is knowledgeable about the physical activities in which the child will participate; and
 - c. Within sight supervision of staff.

2. Disciplinary measures taken against a group because of the individual behavior of a member of the group.
 3. Denial of visitation or communication with significant persons outside the facility solely as a consequence for inappropriate behavior.
 4. Use of a mechanical restraint unless:
 - a. The licensee's policy lists the qualifications of staff allowed to use the restraint;
 - b. Staff allowed to use the restraint have received training in the proper use of the restraint;
 - c. The licensee has documentation of the restraint training in the personnel file of the staff member;
 - d. Use of the restraint is authorized in a child's individual service plan; and
 - e. Staff have tried less restrictive measures which have failed.
 5. Physical restraint, except:
 - a. When the child needs restraint to prevent danger to the child or danger to another; and
 - b. After staff have tried less restrictive measures which have failed.
- F.** A licensee may use a restricted practice only when the practice and the circumstances warranting its use are:
1. Consistent with the licensee's program description and purpose;
 2. Described in the licensee's behavior management policy;
 3. Used as prescribed in this Section; and
 4. Not otherwise prohibited by these rules.
- G.** If a licensee cannot use a specific physical restraint or behavior management technique on a particular child, the child's service plan shall describe the restriction.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997
(Supp. 97-2).

R6-5-7457. Body Searches

If a licensee permits a body search of children in care, the licensee shall have a written policy describing the conditions warranting a body search and the procedures for conducting the search.

1. When searching a child, staff shall use the minimum amount of physical contact required to determine if the child has contraband.
2. The licensee shall not conduct an internal body cavity search on a child.
3. The licensee shall not use any instruments to search a child.
4. The licensee shall not conduct a strip search beyond underwear.
5. Unless a licensed medical practitioner is searching a child, a person of the same gender as the child shall do the search.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997
(Supp. 97-2).

R6-5-7458. Buildings; Grounds; and Water Supply

A. Structures and Improvements: A licensee shall maintain a facility's structures and improvements in good repair, free from danger to health or safety, and as prescribed in this subsection. The licensee shall:

1. Repair doors, windows and other building features that protect a building from weather damage or pest infestation, within 48 hours of finding that the building part is in disrepair;
 2. Document efforts to make or obtain repairs if repairs cannot be completed in 48 hours;
 3. Keep buildings free of vermin infestation;
 4. Keep exits free of obstruction or impediments to immediate use; and
 5. Have barriers appropriate to the developmental needs of children in care to prevent falls from porches and elevated areas, walkways, and stairs.
- B. Exits:** The licensee shall equip each building used by children with exits as prescribed in this subsection.
1. Each building shall have at least two exterior means of egress on each floor.
 2. Exits above ground level shall have an outside fire escape or a fire-resistant stairwell that has been approved by the state or a local fire inspector.
 3. Exit doors shall have only locks that allow the doors to be opened from the inside without use of a key or knowledge of special or restrictive operating procedures.
- C. Grounds:** A licensee shall maintain a facility's grounds in good condition, free from danger to health or safety, and as prescribed in this subsection. The licensee shall:
1. Store garbage and rubbish in non-combustible, covered containers, separate from play areas;
 2. Remove refuse and recyclables from the building at least once a day;
 3. Remove refuse and recyclables from the facility grounds at least once a week.
 4. Use safeguarding measures to separate children in care from potentially hazardous areas on or near the facility grounds;
 5. Maintain fences and other barriers in good repair; and
 6. Locate and install playground or recreational equipment at the facility in accordance with the manufacturer's instructions and recommendations, and maintain the equipment in good repair and in accordance with the manufacturer's instructions and recommendations.
- D. Water supply:** If a facility's water is from any source other than an approved public water supply, the licensee shall obtain a written water analysis report, showing that the water is potable and meets the applicable requirements for safe drinking water in 18 A.A.C. 4. The licensee shall get the analysis and report from a laboratory certified by the Department of Health Services before initial operation and each annual renewal.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997
(Supp. 97-2).

R6-5-7459. Building Interior

- A.** A licensee shall ensure that a facility's physical plant can structurally accommodate the physical and program needs of all children in care according to the standards prescribed in this Article and the licensee's own program description.
- B.** The licensee shall keep a facility clean and sanitary.
- C.** The licensee shall have and maintain furnishings as prescribed in this subsection.
 1. All living areas shall have furniture designed to suit the size and capabilities of the children in care.
 2. A licensee shall replace or repair broken, dilapidated, or defective furnishings and equipment.

3. A licensee shall have mirrors in the facility to permit children in care to examine their personal appearance.
 4. A licensee shall secure the mirrors to walls at heights convenient to the children in care.
- D.** A licensee shall ensure that all spaces used by children have outside ventilation from a window, louvers, air conditioning, or other mechanical equipment. A window or door used for outside ventilation shall have a screen.
- E.** A licensee shall maintain a facility's residential environment at temperatures that do not:
1. Exceed 85° F,
 2. Fall below 65° F during daylight hours, or
 3. Fall below 60° F during sleeping hours.
- F.** A licensee shall use thermometers scaled at no more than 2 degree increments to determine temperature.
- G.** A licensee shall not use free-standing stoves that use wood, sawdust, coal, or pellets, or portable heaters as the primary source of heat for a residential area.
- H.** A licensee shall safeguard hot water radiators or steam radiators and pipes or any other heating device capable of causing a burn.
- I.** A licensee shall maintain and use all electrical equipment, wiring, cords, switches, sockets, and outlets in good working order, under safe conditions, in accordance with the manufacturer's recommendations, and as prescribed in this subsection.
1. Electrical outlets in areas accessible to children younger than 6 shall have safety plugs or plates.
 2. The licensee shall not:
 - a. Use extension cords exceeding 7 feet in length,
 - b. Allow extension cords to be connected together to extend their length, or
 - c. Allow extension cords to run across or through a room or to pass from one room into another.
- J.** A licensee shall provide illumination for a facility's rooms, corridors, and stairways so that children and personnel can perform activities and tasks safely and without eye strain.
- K.** A licensee shall illuminate a facility's outdoor walkways and premises so that children and personnel using areas at night can perform activities and tasks safely.
- L.** A licensee housing more than 10 children shall install and maintain emergency lighting systems in children's living quarters.
1. In this subsection, "emergency lighting system" means a battery or generator operated system that:
 - a. Automatically activates if electrical power fails; and
 - b. Provides sufficient light for persons to exit safely in an emergency.
 2. If a licensee provides written documentation showing that a facility's emergency lighting system meets applicable city or county building codes for such systems, the system is presumed adequate to satisfy this subsection.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997
(Supp. 97-2). Amended by final rulemaking at 6 A.A.R. 4032, effective September 29,
2000 (Supp. 00-3).

R6-5-7460. Kitchens; Food Preparation; and Dining Areas

- A.** A licensee shall maintain a facility's kitchen and dining areas, and shall handle food, as prescribed in this Section.

- B.** The licensee shall:
1. Equip a facility kitchen used for meal preparation with the fixtures, appliances, equipment, tools, and utensils (“kitchen equipment”) necessary for the safe and sanitary preparation, storage, service, and cleanup of food;
 2. Keep kitchen equipment clean and in good working order;
 3. Not use defective, damaged, tin, or aluminum dishes or utensils;
 4. Not use disposable dinnerware or flatware on a daily basis unless the licensee provides evidence, at the time of initial licensure and at each renewal, that disposable items are necessary to protect the health or safety of children in care;
 5. Maintain the temperature of potentially hazardous food at or below 45° F or above 140° F, except when the food is being handled or served;
 6. Cover all food that is to be transported outside of the kitchen and dining areas of the facility; and
 7. Not use home canned foods.
- C.** If a facility has more than 20 children, the licensee shall comply with the requirements in A.A.C. R9-8-132 through R9-8-137.
- D.** If a facility has less than 21 children, the licensee shall comply with A.A.C. R9-8-113, R9-8-115, R9-8-116, R9-8-117, and R9-8-121 through R9-8-127, and shall have:
1. One refrigerator for each 10 children at a facility; and
 2. A three-compartment sink; or
 3. A National Sanitation Foundation (NSF)-listed dishwasher; or
 4. A domestic dishwasher with a sanitizer cycle.
- E.** A facility shall have clean dining areas and tables which allow children, staff, and guests to eat together.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State’s Office May 15, 1997
(Supp. 97-2).

R6-5-7461. Sleeping Areas and Furnishings

- A.** A licensee shall provide each child in care with a designated area for rest and sleep as prescribed in this Section.
1. A licensee shall not use mobile dwellings, trailers, or vehicles as sleeping quarters.
 2. The licensee shall provide children in care with bedroom space that:
 - a. Has a direct source of natural light;
 - b. Has a window that:
 - i. Opens to the outside without a grill or other impediment to immediate, emergency exit;
 - ii. Can be easily opened from the inside;
 - iii. Measures at least 22 inches on each side; and
 - iv. Has a bottom sill that is no more than 48 inches from the floor; and
 - c. Is at least:
 - i. A 74 square foot floor area for a single occupant;
 - ii. A 50 square foot floor area for each occupant in a multiple sleeping area; or
 - iii. A 40 square foot floor area for each crib.
 3. The licensee shall provide each child in care with a bed that:
 - a. Is proportional to the child’s height,
 - b. Is at least 30 inches wide,

- c. Has a solidly constructed bed frame, and
- d. Has safety railings if developmentally appropriate for the child using the bed.
- 4. If a licensee uses a bunk bed, the bed shall be limited to a double bunk, and shall have sufficient head room to allow the upper occupant to sit up.
- 5. A licensee shall use only cribs that have:
 - a. Bars or slats no more than 2 3/8 inches apart;
 - b. A mattress that fits snugly into the crib frame so that there is no space between the mattress and frame; and
 - c. No openings through which a child could place his or her head.
- 6. A licensee shall provide sheets, pillow cases, and blankets for each child and shall maintain bedding in good repair, without tears or stains.
 - a. The licensee shall ensure that sheets and pillowcases are washed at least weekly and more frequently if necessary.
 - b. The licensee shall use water resistant bedding when necessary.
- 7. A licensee shall provide each child with a dresser or other storage space adequate to contain the child's belongings and a designated space for hanging clothing in or near the child's bedroom.
- B.** The square footage area prescribed in subsection (A)(2)(c) is presumed adequate. If a licensee operates a barracks type facility that does not meet these square footage requirements, the licensee shall present a written plan showing how the licensee's square footage provides enough space for sleeping, rest, study, recreation, ingress, and egress in an emergency. The Licensing Authority shall review and approve the plan if it is consistent with the licensee's described program and does not pose a risk of harm to children in care.
- C.** A licensee shall not have bedroom doors that can be locked.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2). Amended by final rulemaking at 6 A.A.R. 4032, effective September 29, 2000 (Supp. 00-3).

R6-5-7462. Bathrooms

- A.** A licensee shall maintain bathrooms and bathroom fixtures in good operating and sanitary condition, and as prescribed in this Section.
 - 1. The licensee shall have facility bathrooms equipped with:
 - a. At least one wash basin and one toilet for every six children in care;
 - b. At least one bathtub or shower for every eight children in care;
 - c. Cold and hot running water, with enough hot water to allow each child a daily bath or shower;
 - d. Bathtubs and showers that are slip-resistant; and
 - e. Toilets and bathtubs or showers which allow a child to have privacy, as developmentally appropriate, or as otherwise prescribed in written program policy.
 - 2. The licensee shall not permit children age 5 or older who are of different genders to share a bathroom at the same time.
 - 3. The licensee shall equip bathrooms to facilitate maximum self-help by children through one or more of the following methods:
 - a. Providing children with step-stools to reach a sink,
 - b. Providing smaller sized bathroom fixtures,
 - c. Providing training toilets,

- d. Placing towel racks and dispensers at lower heights, or
- e. Other similar or comparable methods.
- 4. A licensee shall have bathrooms large enough to permit staff to help children who require it.
- 5. A licensee shall provide bathrooms with sufficient toilet paper, towels, soap, and other items required to maintain good personal hygiene, or shall provide children with personal supplies of these items.
- B.** The bathroom fixture requirements prescribed in subsections (A)(1)(a) and (b) are presumed adequate. If a licensee operates a barracks type facility which does not meet these requirements, the licensee shall present a written plan showing how the licensee's bathroom facilities permit children in care to maintain adequate hygiene. The Licensing Authority shall review and approve the plan if it is consistent with the licensee's described program and does not pose a risk of harm to children in care.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997
(Supp. 97-2).

R6-5-7463. Other Facility Space; Staff Quarters

- A.** A licensee shall ensure that a facility has:
 - 1. A place other than children's living areas to serve as an administrative office for records, secretarial work, and bookkeeping; and
 - 2. Space for private discussions and counseling sessions between individual children and staff.
- B.** If a licensee has staff who reside at the facility, the licensee shall provide those staff with living and sleeping space that is separate from children's areas, including a separate bathroom. The licensee shall provide the children of these staff, who also reside at the facility, with a residential environment that meets the requirements of this Article for children in care.
- C.** A licensee operating a barracks type facility that has been approved as described in R6-5-7461(B) and R6-5-7462(B) is not required to provide separate space as described in subsection (B).

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997
(Supp. 97-2).

R6-5-7464. Fire, Emergency, and Fire Prevention

- A.** Emergency Procedures: A licensee shall have written procedures for staff and children to follow in case of emergency or disaster (natural, medical, or human-caused). The procedures shall include the following:
 - 1. Provisions for the evacuation of buildings, including the evacuation of children with physical disabilities;
 - 2. Assignment of staff to specific tasks and responsibilities;
 - 3. Instructions on the use of alarm systems and signals;
 - 4. Specification of evacuation routes and procedures, with clearly marked diagrams; and
 - 5. Notification as prescribed in R6-5-7434.
- B.** Emergency Practices and Drills: A licensee shall prepare staff and children to respond to emergencies as prescribed in this subsection.

1. The licensee shall train all staff to perform assigned tasks during emergencies, including the location and use of fire fighting equipment.
 2. The licensee shall train staff and children to report fires and other emergencies in accordance with written emergency procedures.
 3. The licensee shall post evacuation procedures in conspicuous locations throughout all buildings.
 4. The licensee shall train staff and children in evacuation procedures and conduct emergency drills at least once a month as prescribed in this subsection.
 - a. Practice drills shall include actual evacuation of children to safe areas.
 - b. Drills shall be held at random times and under varying conditions to simulate the possible conditions in case of fire or other disaster.
 - c. All persons in the building at the time of a drill shall participate in the drill.
 5. A licensee shall maintain a record of all emergency drills. The record shall include:
 - a. Date and time of drill,
 - b. Total evacuation time,
 - c. Exits used,
 - d. Problems noted, and
 - e. Measures taken to ensure that children understand the purpose of a drill and their responsibilities during a drill.
- C. Fire Prevention and Control:** A licensee shall have and maintain fire prevention and safety equipment as prescribed in this subsection.
1. In a facility's residential environment, the licensee shall install and maintain smoke detectors according to the manufacturer's instructions, recommendations, and test specifications and shall maintain smoke detectors in good working order. Each smoke detector shall have a signal to indicate that batteries are low or are not working properly.
 2. The licensee shall put a smoke detector in each separate sleeping area.
 3. The licensee shall clean and test smoke detectors at least every three months. The licensee shall keep a written record of the cleaning and testing at the facility.
 4. A licensee shall install and maintain portable fire extinguishers appropriate in number and size to the area to be protected.
 5. A licensee shall have a qualified person inspect and, if necessary, recharge fire extinguishers at least once a year and immediately after use.
 6. A licensee shall:
 - a. Document the dates that a fire extinguisher is charged and the person or agency responsible for charging it; and
 - b. Attach the documentation to the extinguisher.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997
(Supp. 97-2).

R6-5-7465. General Safety

- A. Ground Floor:** A licensee shall house non-ambulatory children and children younger than 6 only on the ground floor.
- B. Licensees that provide services to young adults:**
 1. A licensee that provides services to young adults shall provide adequate safety information and individualized instruction to promote the safe use of a substance or item that is:

- a. Required to be safeguarded under this Section; and
 - b. Necessary for the young adult's self-sufficiency, such as laundry and cleaning supplies, tools, and kitchen knives.
2. A licensee that provides services to young adults placed in care with their own children shall safeguard substances and items in a manner appropriate to protect the youngest child in residence.
- C. Dangerous objects:** A licensee shall safeguard all potentially dangerous objects, including:
- 1. Firearms and ammunition;
 - 2. Recreation and hunting equipment;
 - 3. Household and automotive tools;
 - 4. Sharp objects such as knives, glass objects, and pieces of metal;
 - 5. Fireplace tools, matches, and other types of lighters;
 - 6. Machinery;
 - 7. Electrical wires, boxes, and outlets;
 - 8. Gas appliances;
 - 9. Chemicals, cleaners, and toxic or flammable substances;
 - 10. Swimming pools, ponds, spas, and other natural or artificial bodies of water; and
 - 11. Motorized vehicles.
- D. Water Temperature:** A licensee shall maintain water that is accessible to children for personal use at a temperature at or below 120° F.
- E. Gas appliances:**
- 1. A licensee shall have a licensed and bonded heating and cooling technician annually inspect all gas-fired devices at a facility. The licensee shall get a written report of the inspection for submission to the Licensing Authority at the time of license renewal.
 - 2. A licensee shall equip all gas-fired devices with an automatic pilot gas shut-off control.
 - 3. A licensee shall remove the valves from unused gas outlets and cap the disconnected gas line with a standard pipe cap.
 - 4. A licensee shall not use unvented water heaters.
 - 5. A licensee shall not use kerosene or gasoline for lighting, cooking, or heating.
 - 6. If a licensee uses a natural or propane gas burning device inside a facility, the licensee shall:
 - a. Install, test, and check carbon monoxide monitoring equipment in a facility's residential environment according to the manufacturer's instructions;
 - b. Maintain the monitoring equipment in good working condition; and
 - c. At the facility, keep a copy of the manufacturer's instructions, and, for one year, a record of the tests.
- F. Finishes and surfaces:**
- 1. A licensee shall not surface walls or ceilings with materials that contain lead except as allowed by law for protection from wood, pellet, or peat burning stoves.
 - 2. A licensee shall not have any walls, equipment, furnishings, toys, or decorations surfaced with lead paint.
 - 3. A licensee that accepts children who are under age 6, developmentally disabled, or severely emotionally disturbed, shall maintain the facility free of lead paint hazards, including permanent removal of any paint that a child may ingest.
- G. Toxic and Flammable Substances:**

1. A licensee shall ensure that any poisons and toxic or flammable substances used at a facility are used in a manner and under conditions that will not contaminate food or be hazardous to children.
 2. A licensee shall ensure that containers of poisons and toxic or flammable substances are prominently and distinctly marked or labeled for easy identification of contents.
 3. A licensee may burn trash only when:
 - a. Local authorities and ordinances allow burning;
 - b. The fire is at least 50 feet from any building used for children's residences; and
 - c. An adult supervises any child involved in the burning.
 4. A licensee shall not use charcoal or gas grills indoors or on covered porches.
- H. Firearms, Weapons, and Recreational and Hunting Equipment:**
1. A licensee shall ban firearms, explosives, and ammunition from a facility and grounds, except a licensee may allow the following:
 - a. Firearms maintained and used exclusively by trained security guards; and
 - b. Non-functional, permanently disabled firearms used for ceremonial purposes if such use is documented in the licensee's policy and procedures.
 2. A licensee shall keep bows and arrows, knives, and other potentially hazardous hunting and recreational equipment in locked secure storage that is not accessible to children.
- I. Tools and Equipment:** A licensee shall maintain lawn and garden equipment and maintenance tools and equipment safe and in good repair, and shall allow children to use them only under the supervision of staff. Depending on the developmental level of the child, the supervision need not be direct supervision.
- J. Telephone service:**
1. A licensee shall equip each living unit that does not house young adults with 24-hour telephone service or an intercom system linked to an outside telephone service, or
 2. A licensee that provides services to young adults shall provide a device in each living unit that allows a young adult to immediately summon on-duty staff or emergency services. In addition, the licensee shall provide a telephone onsite. The licensee shall provide written and verbal information to each young adult explaining how to summon assistance in the event of an emergency.
 3. A licensee shall conspicuously post, adjacent to the telephone:
 - a. The address and telephone number of the facility; and
 - b. Emergency telephone numbers, including fire, police, physician, poison control, Child Protective Services, and ambulance.
- K. Smoking:**
1. A licensee shall not expose a child in care to tobacco products or smoke.
 2. A licensee shall not allow any person to use tobacco products inside buildings.
 3. A licensee shall not allow a child in care to use or possess tobacco products.
- L. Animals:**
1. The licensee shall not maintain, at a facility, any animal that poses a danger to children in care.
 2. The licensee shall have written evidence that dogs kept at a facility have current vaccinations against rabies.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2). Amended by emergency rulemaking at 12 A.A.R. 2233, effective June 1,

2006 for 180 days (Supp. 06-2). Emergency renewed at 12 A.A.R. 4732, effective November 28, 2006 for 180 days (Supp. 06-4). Amended by final rulemaking at 13 A.A.R. 2049, effective May 21, 2007 (Supp. 07-2).

R6-5-7466. Swimming Areas

- A. A licensee shall fence an outdoor swimming pool to separate it from all buildings, with a fence that:
 - 1. Is at least 5 feet high, as measured on the exterior side of the fence; and
 - 2. Has a self-closing, self-latching gate that opens away from the swimming pool. The licensee shall maintain the latching equipment in good working order.
- B. If the licensee accepts children younger than 6, the fence shall:
 - 1. Have no opening through which a spherical object of 4 inches in diameter can pass;
 - 2. Have horizontal components which:
 - a. Are spaced at least 45 inches apart, measured vertically; or
 - b. Do not have any openings greater than 1 3/4 inches, measured horizontally; or
 - 3. Not have any openings for handholds or footholds, or any horizontal components, that can be used to climb the fence from the outside.
- C. Subsections (A) and (B) do not apply to outdoor swimming pools that are entirely surrounded by permanent walls or buildings with doors that can be locked, so long as the walls or building meet the requirements for fencing set forth in subsections (A) and (B).
- D. A licensee shall lock all entrances to a swimming pool when the pool is not in use.
- E. A licensee shall maintain the following life-saving equipment in good repair and readily accessible to the swimming pool:
 - 1. A ring buoy with 1/2-inch width rope that is at least half the distance of the pool measured at its longest point, plus 10 feet; and
 - 2. A shepherd's crook attached to its own pole.
- F. At least one of the staff members supervising children in a pool, shall remain out of the water.
- G. When a pool is in use, a licensee shall keep a daily log to record water quality test results of an on-grounds swimming pool and shall maintain the pool free from contamination in accordance with 9 A.A.C. 8, Article 8.
- H. The licensee shall, when chlorination is used, maintain a free chlorine residual of between 0.1 and 4.0 parts per million, and a pH range of 7.0 to 8.0. A licensee may add dry or liquid chemical sources directly to pool water only when enough time exists for dispersal before use.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7467. Access; Transportation; Outings

- A. Access.
 - 1. A facility shall be accessible by public or private motor vehicle.
 - 2. If the facility cannot be accessed by a road that is passable by motor vehicle 12 months of the year the licensee shall have alternative transportation arrangements to provide access to the facility.
- B. Transportation.

1. A licensee shall provide, arrange, or negotiate responsibility for arranging, with the placing agency or person, transportation required to implement a child's service plan.
2. A licensee shall provide staff supervision in any vehicle the licensee uses to transport a child in care.

C. Outings.

1. For every facility sponsored outing which is not part of the daily routine, such as a recreational trip of four hours or more, or an outing where emergency medical services cannot respond within 12 minutes, a licensee shall maintain, at the facility, a record of the following information:
 - a. A list of children participating in the outing;
 - b. Departure time and anticipated return time;
 - c. License plate numbers of every vehicle used for the outing; and
 - d. Name, location, and, if known, telephone number of the destination.
2. The licensee shall give the driver of a vehicle written emergency information on each child who is participating in the outing and riding with that particular driver.
3. The person supervising the child shall keep the information during the outing. The information shall include:
 - a. Each child's medication requirements, if any;
 - b. Common and known potential adverse reactions a child may have to a medication;
 - c. Adverse reactions a child may have as the result of delay in administration of medication; and
 - d. Any other adverse reaction a child is likely to have due to the child's special needs, including allergic reactions to particular substances or insects.
4. The licensee shall tell the driver about a child's particular needs or problems which may reasonably cause difficulties during transportation, including seizures, tendency toward motion sickness, disability, anxiety, or other phobias.

D. Extended outings: If a licensee takes children in care on an outing that lasts more than 30 consecutive days, the licensee shall:

1. Obtain court permission for any children who are court wards;
2. Comply with the requirements in R6-5-7469 through R6-5-7471 governing outdoor experience programs.

E. Vehicles.

1. A licensee shall ensure that all vehicles used for the transportation of children in care:
 - a. Are mechanically sound and in good repair,
 - b. Conform to applicable motor vehicle laws, and
 - c. Have equipment appropriate to the terrain and the weather.
2. The licensee shall not allow the number of individuals in a vehicle used to transport children in care to exceed the number of available seats and seat belts in a vehicle other than a bus. If the vehicle is a bus, the licensee shall not exceed the maximum stated occupancy on the bus inspection certificate.
3. A licensee serving nonambulatory children or children with disabilities shall provide access to transportation that accommodates the children's special needs and disabilities.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997
(Supp. 97-2).

R6-5-7468. Special Provisions for Shelter Care Facilities

- A. General Requirements:** A licensee operating a shelter care facility shall comply with all requirements prescribed in this Article, unless otherwise provided in this Section.
- B. Admission Policy and Practice:**
1. If a child has already been in shelter care for more than 42 days, a licensee shall not admit the child into shelter care at the licensee's facility, or permit the child to continue residing at the licensee's facility, unless the licensee has:
 - a. Asked the child's placing agency or person to have a multidisciplinary team:
 - i. Assess the child through a review of the child's records or in person; and
 - ii. Develop a service plan for the child; and
 - b. Documented the request in the child's record.
 2. When a child self-refers to a shelter care facility, the licensee shall, within 24 hours of the child's arrival:
 - a. Notify the Department or the child's guardian; and
 - b. Document the placing agency or person's consent for the child's continued placement in a written agreement with the placing agency or person, or by obtaining a court order.
 3. A licensee does not have to obtain medical information and consents before or at the time of a child's admission to a shelter care facility as prescribed in R6-5-7438(E)(4) and (5), but shall document attempts to obtain the medical consents from the placing agency or person within two days of the child's admission.
 4. At the time of a child's admission, the licensee is not required to obtain the comprehensive intake assessment required by R6-5-7438(D), but shall work with the placing agency or person to compile information on and assess the child's current social, behavioral, psychological, developmental, health, legal, family, and educational status, as applicable to the child.
- C. Staff-child ratio:** A shelter care facility shall comply with the staff-child ratios prescribed in R6-5-7437, except that a licensee who accepts six or more children in care at a shelter facility shall have at least one awake staff member on duty during sleeping hours.
- D. Staff development:** In addition to the training requirements prescribed in R6-5-7433, a licensee shall train staff members who work at a shelter care facility to recognize the signs and effects of:
1. Substance use and abuse,
 2. Common childhood illness, and
 3. Communicable disease.
- E. Medical care:** A shelter care facility does not have to provide or arrange a medical examination as required by R6-5-7452(B)(1) unless the general health assessment required by R6-5-7438(E)(9) indicates a need for further medical attention.
- F. Service planning:** Unless a child remains in continuous shelter care for more than 42 consecutive days, a licensee operating a shelter care facility is not required to comply with the R6-5-7441 regarding service planning.
- G. Children's records:** A licensee shall maintain a record for each child in a shelter care facility as prescribed in R6-5-7428 except the licensee need not:
1. Comply with R6-5-7441, except as otherwise provided in subsection (F) above; or
 2. Maintain treatment or clinical records and reports or progress monitoring notes as required by R6-5-7428(9) and (13).

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997
(Supp. 97-2).

R6-5-7469. Special Provisions and Exemptions for Outdoor Experience Programs

- A.** A licensee operating an outdoor experience program shall comply with the requirements in 6 A.A.C. 5, Article 74, except as otherwise provided in this Section.
- B.** An outdoor experience program shall not accept children younger than age 8.
- C.** An outdoor experience program is exempt from the requirements set forth in the following rules:
 - 1. R6-5-7458. Buildings; Grounds; Water Supply;
 - 2. R6-5-7459. Building Interior;
 - 3. R6-5-7460. Kitchens; Food Preparation; and Dining Areas;
 - 4. R6-5-7461. Sleeping Areas and Furnishings;
 - 5. R6-5-7462. Bathrooms;
 - 6. R6-5-7463. Other Facility Space; Staff Quarters;
 - 7. R6-5-7464. Fire, Emergency, and Fire Prevention;
 - 8. R6-5-7465. General Safety;
 - 9. R6-5-7466. Swimming Areas;
 - 10. R6-5-7467. Access; Transportation; Outings; and
 - 11. R6-5-7468. Special Provisions for Shelter Care Facilities.
- D.** An outdoor experience program shall comply with the requirements in R6-5-7470 and R6-5-7471.
- E.** If there is a conflict between the requirements set forth in R6-5-7401 through R6-5-7468 and the requirements set forth in R6-5-7469 through R6-5-7471, the latter requirements govern.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997
(Supp. 97-2).

R6-5-7470. Planning Requirements for Outdoor Experience Programs

- A.** Definitions. As used in this Section, the term "agency" means a licensee operating an outdoor experience program.
- B.** Trip itinerary. The agency shall develop a tentative day-to-day itinerary and a trip map for each trip prior to departure. One copy each of the itinerary and map shall be distributed as follows: to the agency for its office files; to the mobile program staff; when appropriate, to local authorities at each point on the itinerary before departure; to the child placing agency representative for each child who will be departing on the trip, and to the Department licensing representative. When major amendments to the itinerary are necessary due to unforeseen circumstances on the trip, written notification to the designated individuals shall be made. The itinerary shall reflect the following:
 - 1. The travel schedule shall allow for daily periodic rest stops, relaxation, exercise, and personal time.
 - 2. The travel schedule shall not exceed five consecutive days without at least two full intervening non-traveling days, unless emergency conditions such as storms force travel to safer sites.
 - 3. The travel schedule shall specify the number of days of the trip, including departure and return dates and times, and mileage to be covered each day.

4. The travel schedule shall specify the route, specific tentatively planned locations of overnight stops, and activities in which children will participate.
 5. The travel schedule shall specify the mode of transportation.
- C. Trip plans.** The agency shall develop written plans prior to the departure of each trip. These plans shall include:
1. The name, age, sex, address, and emergency phone number of each staff participant and of each child's parent or guardian and placing agency;
 2. The exact location and access route for emergency rescue, search, fire, and medical assistance and law enforcement authorities at each program stop or location including the names, addresses, telephone numbers of other alternative means of communication with such authorities in case of an emergency. This information shall be included and identified on the trip map;
 3. Contingency plans to deal with medical problems, fire, natural disasters, lost children, and other emergencies;
 4. Plans for the care of any person who, for any reason, must be excluded from the program for a period of time;
 5. Provision for and storage within ready access of the program staff, documents which fully identify the group, its leadership, ownership of equipment, purpose, insurance coverage, home base, and which contain completed health history forms and emergency treatment release forms;
 6. Identification of appropriate sources or locations for water, food, doing laundry, bathing, liquid and solid waste, and garbage disposal;
 7. A scheduled progress and condition report system between the mobile program and the agency administrator;
 8. The maintenance by staff of a trip log which details each day's operation including travel time, mileage covered, and occurrences of the day;
 9. The safe storage for all supplies and equipment while in transit as well as at the campsites.
- D. Pre-departure procedures**
1. The appropriate permissions shall be secured, if possible prior to departure, for traveling on roads and properties, using sites, and building fires.
 2. Prior to departure, each child shall receive medical clearance from a physician in order to participate in the mobile portion of the program.
 3. Prior to departure, all children and staff shall receive instruction in the safe and proper use of all equipment to be used on the trip.
 4. Prior to departure, all children and staff shall be oriented as to safety regulations, emergency procedures, and transportation to emergency facilities or personnel, or both.
 5. Prior to departure, the route, activities and logistics shall be approved in writing by the agency administrator.
 6. An emergency liaison coordinator shall be appointed prior to departure. This coordinator or the coordinator's designee shall be available on a 24-hour basis. This person shall be located at the agency administrative office, and shall be at least 21 years of age and shall possess the following information about the program:
 - a. Names of individuals on the trip, including the staff member in charge;
 - b. Exact trip itinerary;
 - c. Number of days, including departure and return dates and times;

- d. Rescue and evacuation plans and locations;
- e. Pertinent medical information about program participants.

Historical Note

Renumbered from R6-5-7307 to R6-5-7470 and amended effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7471. Special Physical Environment and Safety Requirements for Outdoor Experience Programs

A. Definition. As used in this Section, the term "agency" means a licensee operating an outdoor experience program.

B. Campsite location

1. General. The agency shall conduct activities on sites appropriate for the children in terms of individual needs, program goals, and access to service facilities.
2. Hazards
 - a. When selecting a campsite, the agency shall consider supervision of children, security, evacuation routes, animal hazards, and weather conditions, including the possibilities of lightning or flood.
 - b. A campsite shall be located on land that provides good drainage. A campsite shall not be located in a river bed or desert wash.
 - c. A campsite shall be free of debris, poisonous vegetation, and uncontrolled weeds or brush.
 - d. Children shall be warned and protected from hazardous areas such as traffic, cliffs, sinkholes, pits, falling rock or debris, abandoned excavations and poisonous vegetation. Hazardous areas shall be guarded or posted to reduce the possibility of accidents.

C. Physical environment

1. Sleeping shelters

- a. All tents, teepees, or other sleeping shelters made of cloth shall be fire retardant or, if purchased after January 1985, shall be of the fiber-impregnated flame-retardant variety. Plastic sleeping enclosures of any type are prohibited.
- b. Tents or other shelters used for sleeping areas shall be easily cleanable and in good repair, shall be structured and maintained in safe condition and shall afford adequate protection against inclement weather.
- c. Tents or other types of temporary shelters shall provide sleeping space of not less than 15 square feet per person.
- d. Campfires and open flames of any type are prohibited within 21 feet of any tent, teepee, or other sleeping shelter.
- e. Smoking is prohibited within any sleeping shelter.
- f. All sleeping shelters shall be posted with a permanent warning "No open flame in or near this shelter." This warning shall be on a sign or stenciled directly on the shelter.
- g. Sleeping areas shall have direct exit access to the outside which is free of all obstruction or impediments to immediate use in the case of fire or other emergency.

2. Sleeping equipment

- a. Sleeping equipment shall be provided by the agency and shall be clean, comfortable, non-toxic and fire-retardant.
- b. Sleeping equipment shall provide reasonable insulation from cold and dampness. In addition to sleeping bag or blankets, insulation from the ground such as with a

- waterproof ground cloth or air or foam mattress shall be provided. A waterproof sleeping bag is not satisfactory.
- c. All sleeping equipment shall be laundered, dry cleaned, and otherwise sanitized between assignment to different children or staff. Bedding shall be aired at least once every five days and laundered, dry cleaned, and sanitized once every 30 days.
 - d. Each child shall have a place for personal own sleeping equipment, clothes, and personal belongings. Such items shall be labeled or marked as to which child is using or owns such items.
3. Outdoor toilet areas
- a. The agency with outdoor toilet areas shall provide facilities which allow for individual privacy.
 - b. Toilet areas shall be constructed, located and maintained so as to prevent any nuisance or public health hazard. Facilities provided for excreta and liquid waste disposal shall be maintained and operated in a sanitary manner as prescribed by the Department of Health Services in A.A.C. R9-8-301 through R9-3-308, and the Department of Environmental Quality in 18 A.A.C. 8, Article 6.
 - c. Toilet areas which do not have plumbing shall be located at least 75 feet from but within 300 feet of any living or sleeping area, or both, and shall be located at least 100 feet from any lake, stream, or water supply.
 - d. Toilets, outhouses, or portable shacks shall be adequate in number based on one seat for every 10 children in care.
 - i. There shall be a minimum of two seats if there are more than five children.
 - ii. If the agency serves physically disabled children, toilet facilities shall provide one seat for every eight persons.
 - e. Toilet facilities shall be well ventilated, allow for air circulation, be screened and periodically treated to deter insects, and be in good repair. An adequate supply of toilet paper shall be provided.
 - f. Toilets, outhouses, and portable shacks shall be cleaned and disinfected at least daily. Portable shacks shall be dumped daily in an approved dump station.
 - g. Toilet seats shall be constructed of nonporous materials. Wood is not acceptable.
 - h. Handwashing facilities shall be adjacent to the toilet area and shall be separate and apart from sinks and areas used for food preparation or washing pots, pans, kitchen, and eating utensils. Individual soaps and hand-drying devices shall be available.
4. Food preparation and serving
- a. Menus. Menus shall be planned at least one week in advance and shall then be dated, posted, and kept on file for one year.
 - b. Food
 - i. All food and drink shall be stored to prevent spoilage. Only the foods which can be maintained in a wholesome condition with the equipment available shall be used.
 - ii. All milk and milk products utilized by the agency shall be obtained from sources approved by the State Department of Health Services.
 - iii. Only pasteurized milk and U.S. Government- inspected meat shall be served to the children. Powdered milk may only be used for cooking or when no refrigeration is available on a wilderness trip.
 - iv. Spoiled or contaminated foods shall not be used.

- v. Raw fruits and vegetables shall be washed before use.
- c. Preparation
 - i. All persons handling food shall wear clean outer garments and keep their hands and fingernails clean at all times while handling food, drink, utensils, or equipment.
 - ii. Smoking in the food preparation area is prohibited.
 - iii. Handwashing areas, including water, soap, and approved sanitary towels or other approved hand-drying devices, shall be provided adjacent to food preparation areas.
 - iv. Areas in which food and drink are stored, prepared or served, or in which utensils are washed, shall be rodent proof, rodent free, and rubbish free. They shall be cleaned after the serving of each meal. Any floors, walls, shelves, tables, utensils, and equipment in these areas shall be of such construction as to be easily cleaned, and shall be well lighted and ventilated.
 - v. All food preparation and service shall comply with applicable Department of Health Services food service rules in 9 A.A.C. 8, Article 1.
 - vi. No dish, receptacle, or utensil used in handling food for human consumption shall be used or kept for use if chipped, cracked, or broken.
 - vii. Prepared food shall be maintained at temperatures below 45° F or above 140° F; leftovers shall be reheated to 165° F.
- d. Serving
 - i. Meal time shall be structured to make it a pleasant experience with sufficient time allowed for the children to eat at a reasonable, leisurely rate.
 - ii. Normal conversation shall be allowed and encouraged during meals.
- e. Dish and utensil washing
 - i. Disposable or single-use dishes, utensils, receptacles or towels used in handling or preparing food shall be discarded after one use.
 - ii. Non-disposable food service dishes and utensils shall be cleaned and disinfected after each use in accordance with the following:
 - (1) A three-compartment sink or vat shall be used. Dishes and utensils shall be thoroughly scraped, washed with soap or detergent in hot water, kept clean, then rinsed free of detergents in clear water and then immersed for a period of at least two minutes in a warm or hot chlorine solution containing at no time less than 50 parts per million of available chlorine or such other solution as may be approved by the state or local health authority.
 - (2) Sinks shall be large enough to thoroughly immerse pots and pans.
 - (3) Dish towels shall not be used.
 - (4) Dishes and utensils shall be air dried. Drain boards shall be provided for draining dishes and utensils.

D. Equipment

1. Tools. Power tools, garden tools, and repair equipment shall be kept in a locked area and used by children only under adult supervision.
2. Protective clothing/equipment. Appropriate protective clothing/equipment shall be provided to children by the agency, when children are participating in potentially hazardous activities.
3. Program equipment

- a. The agency shall use program equipment that is maintained in good repair, stored in such a manner as to safeguard the effectiveness of the equipment, and is given a complete safety check periodically and immediately prior to each use. Equipment shall be discarded after a period of time designated by the manufacturer.
 - b. The agency shall use program equipment appropriate to the age, size, and ability of each child in the activity.
- E. Storage.** The agency shall provide sufficient and appropriate storage facilities.
1. Toxic substances
 - a. The agency shall have securely locked storage spaces for all harmful materials. The keys to such storage spaces shall be available only to authorized staff members.
 - b. House and garden insecticides and other poisonous materials and all corrosive materials shall be kept in locked storage out of reach of children. Such storage shall not be in or near kitchen or food preparation or storage areas.
 - c. The agency shall have only those poisonous or toxic materials needed to maintain the program.
 2. Drugs
 - a. A special cabinet shall be designated for medicine only. The medicine cabinet shall be kept locked and periodically cleaned. All outdated medications and those prescribed for past illnesses or for children discharged from the agency shall be destroyed.
 - b. All prescription medicines, drugs, etc., requiring refrigeration shall be marked with the required temperature range and stored in a refrigerator with a thermometer separate from food items and maintained under temperature ranges recommended by the manufacturer.
 3. Flammable materials. Flammable liquids and gases shall be stored in metal containers only. The storage area must be separated from the rest of the living/program area.
 4. Food
 - a. All food and drink shall be stored so as to be protected from dust, flies, vermin, rodents, and other contamination. No live animals shall be allowed in any area in which food or drink is stored.
 - b. Food and nontoxic cleaning supplies must be stored separately. Clean dishes and utensils shall be stored on properly covered shelves or in containers which are cleaned once a week with a chlorine solution (1 tablespoon of bleach to one gallon of water or an acceptable equivalent).
 - c. All perishable food items shall be kept refrigerated except during the time of preparation and service.
 - d. The temperature of refrigerated food must be maintained within a range from 38°F to 45°F.
 - e. A thermometer shall be located in each refrigerator, including ice boxes and ice chests, as well as electric or gas refrigerators. Where ice and ice boxes or chests are used, adequate ice shall be provided, meats and other highly perishable foods shall not be stored over 24 hours and ice chests shall be drained to prevent accumulation of water from melted ice.
- F. Water**
1. Approved source. The agency must have a sufficient water supply which is potable and from an approved source or purified for drinking, brushing teeth, and cooking.

2. Water purification. Water purification tablets or other means of disinfecting water shall be available at all times. The agency shall have a written policy on effective purification methods to be employed according to the water sources utilized and possible types of contamination.
3. Bathing. Warm water facilities shall be planned for and available for each child to bathe at least once a week.
4. Washing and laundering. Personal washing and laundering is not permitted in any body of water. Water used for these purposes shall be taken in a container from the lake, river or pond, and after use, shall be dumped on land at least 50 yards from the water source.
5. Drinking water
 - a. Cool, potable drinking water shall be available for all children at all times.
 - b. The use of a common drinking utensil is prohibited.

G. Sanitation

1. Health and Environmental requirements
 - a. The disposal of sewage, garbage, and other wastes shall be done in accordance with local health and applicable state requirements, as provided in 18 A.A.C. 8, Article 6 and 18 A.A.C. 9, Article 8.
 - b. The agency shall obtain sanitation inspections of mobile kitchens or mobile toilet facilities, or both, prior to each trip by state or county authorities. Written reports of the sanitary inspections shall be kept on file at the agency. The agency shall meet all local, state, and federal health rules and regulations.
2. Garbage and rubbish
 - a. Garbage and rubbish shall be stored securely in durable, noncombustible, leakproof, non-absorbent containers covered with tight-fitting lids. Such containers shall be provided with a waterproof liner or thoroughly cleaned after each emptying.
 - b. Garbage and rubbish storage shall be separate from living/sleeping areas.
 - c. Garbage, rubbish and other solid wastes shall be disposed of twice weekly at an approved sanitary landfill or similar disposal facility. In areas where no facilities are immediately available, solid wastes shall be packed out or disposed of in a manner in accordance with the regulations governing the area.
3. Sewage and wastes
 - a. Sewage and other liquid wastes shall be disposed of in a public sewage system or, in the absence thereof, in a manner approved by the local health authority.
 - b. Where possible, adequate and safe sewage facilities with flush toilets shall be provided.
4. Insects and rodents. Methods utilized in control of insects and rodents shall be used in a safe, cautious manner to avoid poisonous or toxic contamination to human beings.

H. Safety

1. Emergency procedures
 - a. The agency shall have and follow written procedures for staff and children in case of emergency. These procedures shall be developed with the assistance of qualified fire, safety, and rescue personnel and shall include provisions for the evacuation of all program areas and assignment of staff.
 - b. The agency shall train staff and children to report fires and other emergencies appropriately. Children and staff shall be trained in fire prevention.

- c. The agency shall conduct emergency drills which shall include actual evacuation of children to safe areas at least monthly. The agency shall provide training for personnel on all shifts in performing assigned tasks during emergencies and making personnel familiar with the use of agency fire-fighting equipment.
 - i. Emergency drills shall be held at unexpected times and under varying conditions to simulate the possible conditions of fire or other disasters.
 - ii. All persons in the program area shall participate in emergency drills.
 - iii. A record of such emergency drills shall be maintained.
 - iv. The agency shall make special provisions for the evacuation of any physically handicapped children in the program.
 - v. The agency shall help emotionally disturbed or perceptually handicapped children understand the nature of such drills.
2. General program safety
 - a. The agency shall have written operating procedures, safety regulations, and emergency procedures for special program activities in which children participate, including aquatics, diving, lifesaving, instructional swimming, recreational swimming, water skiing, skin diving, scuba diving, boating, canoeing, rowing, sailing, crafts, bicycling, farming, horseback riding, mountaineering, rock climbing, rappelling, caving, outdoor living skills, physical fitness, snow and ice activities, archery, gymnastics, riflery, contact sports, backpacking, expedition travel, and animal handling.
 - b. The agency shall provide the written operating procedures, safety regulations, and emergency procedures to the Department licensing staff for review and approval.
 - c. All children and staff shall receive instruction in the safe and proper use of all equipment and animals to be used by the program.
 - d. All children and staff shall be oriented as to safety regulations, emergency procedures and transportation to emergency facilities and/or personnel.
3. Electrical
 - a. Electrical wiring and electrical appliances shall be installed in accordance with the Arizona State Fire Code at A.A.C. R4-36-201.
 - b. Electrical wires extending over activity areas shall be fully insulated and located at least 12 feet above the activity area.
 - c. All exposed wiring shall be fully insulated.
4. Gas appliances
 - a. The installation of gas appliances for lighting, cooking, space heating, and water heating shall conform to state and local codes. Where no code applies, the provisions of A.R.S. §§ 36-1621 through 36-1626, together with the standards for the installation of gas appliances and gas piping, shall be followed.
 - b. All unused gas outlets shall have the valves removed and shall be capped off with a standard pipe cap.
 - c. Gasoline shall not be used for lighting, cooking, or heating.
5. Fire safety equipment
 - a. Portable fire extinguishers shall be available and maintained for emergency fire protection. The number and type shall depend on the area to be protected.
 - b. All fire extinguishers shall be inspected at least monthly by staff members for proper location and to determine whether they are accessible, fully charged, and operable.

- c. All fire extinguishers shall be inspected by an authorized fire extinguisher company at least once a year from the date of last charge and recharged immediately after use, or as otherwise necessary, showing the date of charging and the agency or company performing the work.
 - d. A dependable method of sounding a fire alarm shall be maintained in every agency area where children are located.
 - e. A written fire evacuation plan shall be posted.
- I. Water safety**
- 1. Water activities supervision
 - a. A water activities program operated by the agency shall at all times be under the immediate supervision of a person holding current certification as a Red Cross Water Safety Instructor, a YMCA Instructor in swimming and life saving, or an Aquatic Instructor Boy Scouts of America. A water-activities program includes recreational and instructional swimming in a pool, on a beach, or other approved water areas, rowing, canoeing, sailing, boating, water skiing, snorkeling and scuba diving.
 - b. The water activities supervisor shall provide pre-service training programs for participating children, supervise qualified lifeguards for water activities and maintain water activities equipment in safe working order.
 - c. There shall be a minimum of one guard currently certified in Red Cross Advanced Lifesaving, YMCA Lifesaving, or a Lifeguard Boy Scouts of America on duty for each 25 persons in or on the water, and in addition one staff member directly watching every 10 or less persons in or on the water.
 - 2. Swimming procedures
 - a. American Red Cross, YMCA, or Boy Scouts of America tests shall be used to determine each child's swimming ability. Children shall be confined to an area equal to the limits of their swimming skills or an area requiring lesser skills for which they have been classified.
 - b. A method of supervising and checking bathers shall be established and enforced. The system used shall be supervised during swimming periods by a member of the aquatics staff and checks shall be conducted not less than every 10 minutes. A written "lost swimmer" plan shall be established and all staff shall know exactly what their duties are in case of an emergency.
 - c. Children shall swim only in areas designated by the water activities supervisor as safe.
 - d. Swimming is prohibited during the hours of darkness except in lighted pools.
 - 3. Swimming areas
 - a. A swimming area shall be maintained in a clean and safe condition, free from holes, sharp edges, and hidden dangers. The agency shall post notice of any known hazard in the vicinity and shall properly safeguard children.
 - b. The swimming area shall have a delineation of areas for non-swimmers, intermediates, and swimmers in accordance with the standards of the American Red Cross, YMCA, Boy Scouts of America.
 - c. Lifesaving equipment shall be provided at a swimming area and placed so it is immediately available in case of an emergency. The equipment shall be kept in good working order and include a bell or whistle, two assist poles, and a ring buoy.

- d. The water of a natural swimming area shall be free from contamination by garbage, refuse, sewage pollution, or foreign material.
- 4. Watercraft and water-skiing
 - a. Any watercraft activities shall be conducted during daylight hours and supervised by the aquatics program instructor. A U.S. Coast Guard-approved life preserver shall be provided for each occupant of a watercraft. A non-swimmer shall wear a vest-type Coast Guard-approved life preserver and not be permitted in a watercraft unless accompanied by a staff member. A child shall wear a vest-type Coast Guard-approved life preserver before entering and while in white water or on a lake when the water is rough or while water-skiing.
 - b. During a watercraft activity period, a lifeguard shall patrol the watercraft area in a lifeboat. A watercraft docking area shall not be in the swimming area.
 - c. The swimming area shall not be used for the launching or stopping of water-skiers.
 - d. The agency which requires or permits children to use watercraft shall have special coverage for such activities included in the agency's liability insurance.
- J.** Communications. The agency shall have a plan for emergency communication and communication equipment available with each mobile program unit, which may include:
 - 1. Telephone in camp units and outposts;
 - 2. Two-way radio or walkie-talkie;
 - 3. Knowledge of phone or radio locations on backpack, horseback, canoe or car trips, such as Ranger stations in remote areas;
 - 4. Simple code by flag, smoke, or mirror or other means if planned in advance.
- K.** Transportation
 - 1. Vehicles
 - a. The agency shall provide or arrange transportation necessary for implementing the child's service plan.
 - b. Vehicles used in transporting children in care of the agency shall be licensed and inspected in accordance with Arizona state law.
 - c. Vehicles used for the transportation of children shall be maintained in a safe condition and be equipped in a fashion appropriate for the season.
 - d. The agency shall maintain written evidence that all vehicles owned, leased, borrowed, or rented by the agency to transport children are serviced regularly and maintained safely.
 - e. Vehicles used for the transportation of children shall be equipped with a first-aid kit and emergency accessories including tools, a fire extinguisher and flares or reflectors.
 - f. The agency shall not allow the number of persons in any vehicle used to transport children to exceed the number of available seats in the vehicle.
 - g. The agency shall not transport children in open truck beds or in trailers.
 - h. The agency shall ensure that any vehicle used to transport children has the following minimum amounts of liability insurance:
 - Injury per person: \$300,000
 - Injury per accident: \$1,000,000
 - 2. Drivers
 - a. Any person transporting children in care of the agency shall be licensed to operate that class of vehicle according to Arizona state law.

- b. The agency shall provide adequate supervision in any vehicle used by the agency to transport children in care.
- c. The agency shall ascertain the nature of any need or problem of a child which might cause difficulties during transportation, such as seizures, a tendency towards motion sickness, or a disability. The agency shall communicate such information to the operator of any vehicle transporting children in care.
- 3. Transportation of nonambulatory children. The following additional arrangements are required for agencies serving handicapped, nonambulatory children.
 - a. A ramp device to permit entry and exit of a child from the vehicle must be provided for all vehicles except automobiles used to transport physically handicapped children. A hydraulic lift may be utilized provided that a ramp is also available in case of emergency.
 - b. In all land vehicles except automobiles, wheelchairs shall be securely fastened to the floor.
 - c. In all land vehicles except automobiles, the arrangement of the wheelchairs shall provide an adequate aisle space and shall not impede access to the exit door of the vehicle.
- 4. Emergency transportation
 - a. The agency shall have means of transporting children in cases of emergency.
 - b. The agency shall have a written plan for transportation of injured persons to emergency medical services.

L. Animals

- 1. Safety. The agency shall be responsible for the care and behavior of pets or any animals allowed or used in the program. Animals shall have had necessary rabies shots.
- 2. Insurance. The agency which requires or permits children to ride horses or other domesticated animals shall have specific coverage for such activities included in the agency's liability insurance.
- 3. Sanitation. A temporary, shelter, corral, tie-rail, or hitching post shall be located beyond 50 feet of an area where food is prepared, cooked, or served. Fly repellents and daily removal of manure shall be used to prevent such a location from becoming an attraction for or breeding place for flies.

Historical Note

Renumbered from R6-5-7308 and amended effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

APPENDIX 1

FACTOR

A

**HEALTH
WELFARE**

**INDICIA OF A
INDICIA OF**

**BEHAVIORAL
CHILD**

**AGENCY
AGENCY**

1. Primary purpose health	environment	To provide mental To provide a safe & treatment healthy living
2. Accreditation CARF JCAHO		JCAHO; COA; COA; Never for this specific seeking
facility		
licensure		
3. Nursing Services		Integrated into Occasional
use		services
4. On-campus educational		Primarily seriously Primarily regular emotionally education &
services disturbed (SED); learning		occasional regular disabilities;
occasional		education SED
5. Population served psychiatrically behavior		Described as Described as
seriously		disordered; disordered, emotionally delinquent, psychologically dependent,
disturbed;		
disturbed neglected,	undersocialized	
6. Self-description Program	Agency; Social	Behavioral Health Child Welfare Psychiatric Facility

orientation	Services Agency; Educational	Psychosocial orientation; Re-education
7. Primary source of psychiatrists; courts; referrals Corrections;	Insurance companies; CHAMPUS; Juvenile	Psychologists; DES; Juvenile
transition around		RBHA's RBHA's as or with wrap-
8. Counseling, psychological, to all psychiatric services		Routinely provided Provided only on an clients "as-needed"
basis 9. Location of behavioral health services program office of		Within the Usually in
	contracted practitioner	
10. Behavioral health contractors practitioners		Employees or Usually contracted services; may be
	contractor from	another or agency
program 11. Case work services any, are professional		Social workers, if Social workers are only part of primary part of staff professional staff
12. Staff titles; direct care workers health technicians;		Behavioral House parents; child

technicians;
teaching

psychiatric
care workers;

psychiatric nurses
parents

Historical Note

Appendix 1 adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

8-501. Definitions

A. In this article, unless the context otherwise requires:

1. "Child developmental certified home" means a regular foster home that is licensed pursuant to section 8-509 and that is certified by the department of economic security pursuant to section 36-593.01.

2. "Child welfare agency" or "agency":

(a) Means:

(i) Any agency or institution that is maintained by a person, firm, corporation, association or organization to receive children for care and maintenance or for twenty-four hour social, emotional or educational supervised care or who have been adjudicated as a delinquent or dependent child.

(ii) Any institution that provides care for unmarried mothers and their children.

(iii) Any agency that is maintained by this state, a political subdivision of this state or a person, firm, corporation, association or organization to place children or unmarried mothers in a foster home.

(b) Does not include state operated institutions or facilities, detention facilities for children established by law, health care institutions that are licensed by the department of health services pursuant to title 36, chapter 4 or private agencies that exclusively provide children with social enrichment or recreational opportunities and that do not use restrictive behavior management techniques.

3. "Division" or "department" means the department of child safety.

4. "Former dependent child" means a person who was previously adjudicated a dependent child in a dependency proceeding that has been dismissed by order of the juvenile court.

5. "Foster child" means a child placed in a foster home or child welfare agency.

6. "Foster home" means a home that is maintained by any individual or individuals having the care or control of minor children, other than those related to each other by blood or marriage, or related to such individuals, or who are legal wards of such individuals.

7. "Foster parent" means any individual or individuals maintaining a foster home.

8. "Group foster home" means a licensed regular or special foster home that is suitable for placement of more than five minor children but not more than ten minor children.

9. "Out-of-home placement" means the placing of a child in the custody of an individual or agency other than with the child's parent or legal guardian and includes placement in temporary custody pursuant to section 8-821, subsection A or B, voluntary placement pursuant to section 8-806 or placement due to dependency actions.

10. "Parent" means the natural or adoptive mother or father of a child.

11. "Reason for leaving care" means one of the following:

(a) Reunification with a parent or primary caretaker.

(b) Living with another relative.

(c) Adoption by a relative.

(d) Adoption by a foster parent.

(e) Adoption by another person.

(f) Age of majority.

(g) Guardianship by a relative.

(h) Guardianship by another person.

(i) Transfer to another agency.

(j) Runaway.

(k) Death.

12. "Receiving foster home" means a licensed foster home that is suitable for immediate placement of children when taken into custody or pending medical examination and court disposition.

13. "Regular foster home" means a licensed foster home that is suitable for placement of not more than five minor children.

14. "Relative" means a grandparent, great-grandparent, brother or sister of whole or half blood, aunt, uncle or first cousin.

15. "Restrictive behavior management" means an intervention or procedure that attempts to guide, redirect, modify or manage behavior through the use of any of the following:

(a) Physical force to cause a child to comply with a directive. Physical force does not include physical escort. For the purposes of this subdivision, "physical escort" means temporarily touching or holding a child's hand, wrist, arm, shoulder or back to induce the child to walk to a safe location.

(b) A device, action or medication to restrict the movement or normal function of a child in order to control or change the child's behavior and that includes:

(i) Chemical restraint. For the purposes of this item, "chemical restraint" means the use of any psychoactive medication as a restraint to control the child's behavior or to restrict the child's freedom of movement and that is not a standard treatment for the child's medical or psychiatric condition.

(ii) Mechanical restraint. For the purposes of this item, "mechanical restraint" means the use of any physical device to limit a child's movement and to prevent the child from causing harm to self or to others. Mechanical restraint does not include devices such as orthopedically prescribed devices, surgical dressings or bandages, protective helmets or any other method that involves the physical holding of a child to conduct a routine physical examination or test or to protect the child from falling out of bed or to permit the child to participate in activities in order to reduce the risk of physical harm to the child.

(iii) Physical restraint. For the purposes of this item, "physical restraint" means applying physical force to reduce or restrict a child's ability to freely move the child's arms, legs or head. Physical restraint does not include temporarily holding a child to permit the child to participate in activities of daily living if this holding does not involve the risk of physical harm to the child.

(iv) Seclusion. For the purposes of this item, "seclusion" means placing a child against the child's will in a room in which the child is unable to open the door in order to prevent the child from doing harm to self or others.

16. "Special foster home" means a licensed foster home that is capable of handling not more than five minor children who require special care for physical, mental or emotional reasons or who have been adjudicated delinquent. Special foster home includes any home handling foster children aged twelve through seventeen.

B. A foster home or any classification of foster home defined in subsection A of this section includes a home having the care of persons who are under twenty-one years of age and the cost of whose care is provided pursuant to section 8-521.01.

8-531. Definitions

In this article, unless the context otherwise requires:

1. "Abandonment" means the failure of a parent to provide reasonable support and to maintain regular contact with the child, including providing normal supervision. Abandonment includes a judicial finding that a parent has made only minimal efforts to support and communicate with the child. Failure to maintain a normal parental relationship with the child without just cause for a period of six months constitutes prima facie evidence of abandonment.

2. "Agency" means an agency licensed by the division to place children for adoption.

3. "Child" means a person less than eighteen years of age.

4. "Custodian" means a person, other than a parent or legal guardian, who stands in loco parentis to the child or a person to whom legal custody of the child has been given by order of a court of competent jurisdiction.

5. "Custody" or "legal custody" means a status embodying all of the following rights and responsibilities:

(a) The right to have physical possession of the child.

(b) The right and the duty to protect, train and discipline the child.

(c) The responsibility to provide the child with adequate food, clothing, shelter, education and medical care, provided that such rights and responsibilities shall be exercised subject to the powers, rights, duties and responsibilities of the guardian of the person and subject to the residual parental rights and responsibilities if they have not been terminated by judicial decree.

6. "Division" means the department.

7. "Guardian ad litem" means a person appointed by the court to protect the interest of a minor or an incompetent in a particular case before the court.

8. "Guardianship of the person" with respect to a minor means the duty and authority to make important decisions in matters affecting the minor including but not necessarily limited either in number or kind to:
- (a) The authority to consent to marriage, to enlistment in the armed forces of the United States and to major medical, psychiatric and surgical treatment, to represent the minor in legal actions and to make other decisions concerning the child of substantial legal significance.
 - (b) The authority and duty of reasonable visitation, except to the extent that such right of visitation has been limited by court order.
 - (c) The rights and responsibilities of legal custody, except where legal custody has been vested in another individual or in an authorized agency.
 - (d) When the parent-child relationship has been terminated by judicial decree with respect to the parents, or only living parent, or when there is no living parent, the authority to consent to the adoption of the child and to make any other decision concerning the child that the child's parents could make.
9. "Juvenile court" means the juvenile division of the superior court.
10. "Parent" means the natural or adoptive mother or father of a child.
11. "Parent-child relationship" includes all rights, privileges, duties and obligations existing between parent and child, including inheritance rights.
12. "Parties" includes the child, the petitioners and any parent of the child required to consent to the adoption pursuant to section 8-106.

8-821. Taking into temporary custody; medical examination; placement; interference; violation; classification

A. A child shall be taken into temporary custody in proceedings to declare a child a temporary ward of the court to protect the child, pursuant to an order of the juvenile court on a petition by an interested person, a peace officer or a child safety worker under oath that reasonable grounds exist to believe that temporary custody is clearly necessary to protect the child from suffering abuse or neglect. If a child is taken into temporary custody pursuant to this section, the child's sibling shall also be taken into temporary custody only if reasonable grounds independently exist to believe that temporary custody is clearly necessary to protect the child from suffering abuse or neglect.

B. A child may be taken into temporary custody by a peace officer, a child welfare investigator or a child safety worker if temporary custody is clearly necessary to protect the child because probable cause exists to believe that the child is either:

- 1. A victim or will imminently become a victim of abuse or neglect.
- 2. Suffering serious physical or emotional injury that can only be diagnosed by a medical doctor or psychologist.
- 3. Physically injured as a result of living on premises where dangerous drugs or narcotic drugs are being manufactured. For the purposes of this paragraph, "dangerous drugs" and "narcotic drugs" have the same meanings prescribed in section 13-3401.
- 4. Reported by the department to be a missing child at risk of serious harm.

C. In determining if a child should be taken into temporary custody, the interested person, peace officer, child welfare investigator or child safety worker shall take into consideration:

- 1. As a paramount concern the child's health and safety.
- 2. Whether the parent is willing to participate in any services that are offered to the parent.

D. A person who takes a child into custody pursuant to subsection B, paragraph 2 of this section shall immediately have the child examined by a medical doctor or psychologist. After the examination the person shall release the child to the custody of the parent or guardian of the child unless the examination reveals abuse or neglect. Temporary custody of a child taken into custody pursuant to subsection B, paragraph 2 of this section shall not exceed twelve hours.

E. A child who is taken into temporary custody pursuant to this article shall not be detained in a police station, jail or lockup where adults charged with or convicted of a crime are detained.

F. A child shall not remain in temporary custody for more than seventy-two hours excluding Saturdays, Sundays and holidays unless a dependency petition is filed.

G. A person who knowingly interferes with the taking of a child into temporary custody under this section is guilty of a class 2 misdemeanor.

13-1404. Sexual abuse; classification

A. A person commits sexual abuse by intentionally or knowingly engaging in sexual contact with any person who is fifteen or more years of age without consent of that person or with any person who is under fifteen years of age if the sexual contact involves only the female breast.

B. It is not a defense to a prosecution for a violation of this section that the other person consented if the other person was fifteen, sixteen or seventeen years of age and the defendant was in a position of trust.

C. Sexual abuse is a class 5 felony unless the victim is under fifteen years of age in which case sexual abuse is a class 3 felony punishable pursuant to section 13-705.

13-1405. Sexual conduct with a minor; classification

A. A person commits sexual conduct with a minor by intentionally or knowingly engaging in sexual intercourse or oral sexual contact with any person who is under eighteen years of age.

B. Sexual conduct with a minor who is under fifteen years of age is a class 2 felony and is punishable pursuant to section 13-705. Sexual conduct with a minor who is at least fifteen years of age is a class 6 felony. Sexual conduct with a minor who is at least fifteen years of age is a class 2 felony if the person is or was in a position of trust and the convicted person is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed has been served or commuted.

13-1406. Sexual assault; classification; increased punishment

A. A person commits sexual assault by intentionally or knowingly engaging in sexual intercourse or oral sexual contact with any person without consent of such person.

B. Sexual assault is a class 2 felony, and the person convicted shall be sentenced pursuant to this section and the person is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served or commuted. If the victim is under fifteen years of age, sexual assault is punishable pursuant to section 13-705. The presumptive term may be aggravated or mitigated within the range under this section pursuant to section 13-701, subsections C, D and E. If the sexual assault involved the intentional or knowing administration of flunitrazepam, gamma hydroxy butyrate or ketamine hydrochloride without the victim's knowledge, the presumptive, minimum and maximum sentence for the offense shall be increased by three years. The additional sentence imposed pursuant to this subsection is in addition to any enhanced sentence that may be applicable. The term for a first offense is as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
5.25 years	7 years	14 years

The term for a defendant who has one historical prior felony conviction is as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
7 years	10.5 years	21 years

The term for a defendant who has two or more historical prior felony convictions is as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
14 years	15.75 years	28 years

C. The sentence imposed on a person for a sexual assault shall be consecutive to any other sexual assault sentence imposed on the person at any time.

D. Notwithstanding section 13-703, section 13-704, section 13-705, section 13-706, subsection A and section 13-708, subsection D, if the sexual assault involved the intentional or knowing infliction of serious physical injury, the person may be sentenced to life imprisonment and is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until at least twenty-five years have been served or the sentence is commuted. If the person was at least eighteen years of age and the victim was twelve years of age or younger, the person shall be sentenced pursuant to section 13-705.

13-1410. Molestation of a child; classification

A. A person commits molestation of a child by intentionally or knowingly engaging in or causing a person to engage in sexual contact, except sexual contact with the female breast, with a child who is under fifteen years of age.

B. Molestation of a child is a class 2 felony that is punishable pursuant to section 13-705.

13-3552. Commercial sexual exploitation of a minor; classification

A. A person commits commercial sexual exploitation of a minor by knowingly:

1. Using, employing, persuading, enticing, inducing or coercing a minor to engage in or assist others to engage in exploitive exhibition or other sexual conduct for the purpose of producing any visual depiction or live act depicting such conduct.
2. Using, employing, persuading, enticing, inducing or coercing a minor to expose the genitals or anus or the areola or nipple of the female breast for financial or commercial gain.
3. Permitting a minor under the person's custody or control to engage in or assist others to engage in exploitive exhibition or other sexual conduct for the purpose of producing any visual depiction or live act depicting such conduct.
4. Transporting or financing the transportation of any minor through or across this state with the intent that the minor engage in prostitution, exploitive exhibition or other sexual conduct for the purpose of producing a visual depiction or live act depicting such conduct.

5. Using an advertisement for prostitution as defined in section 13-3211 that contains a visual depiction of a minor.

B. Subsection A, paragraph 5 of this section does not apply to an act that is prohibited by section 13-3555 or to websites or internet service providers that host advertisements created and published by third parties and do not participate in creating or publishing the advertisements.

C. Commercial sexual exploitation of a minor is a class 2 felony and if the minor is under fifteen years of age it is punishable pursuant to section 13-705.

13-3553. Sexual exploitation of a minor; evidence; classification

A. A person commits sexual exploitation of a minor by knowingly:

1. Recording, filming, photographing, developing or duplicating any visual depiction in which a minor is engaged in exploitive exhibition or other sexual conduct.

2. Distributing, transporting, exhibiting, receiving, selling, purchasing, electronically transmitting, possessing or exchanging any visual depiction in which a minor is engaged in exploitive exhibition or other sexual conduct.

B. If any visual depiction of sexual exploitation of a minor is admitted into evidence, the court shall seal that evidence at the conclusion of any grand jury proceeding, hearing or trial.

C. Sexual exploitation of a minor is a class 2 felony and if the minor is under fifteen years of age it is punishable pursuant to section 13-705.

13-3608. Incest; classification

Persons who are eighteen or more years of age and are within the degrees of consanguinity within which marriages are declared by law to be incestuous and void, who knowingly intermarry with each other, or who knowingly commit fornication or adultery with each other are guilty of a class 4 felony.

13-3212. Child prostitution; classification; increased punishment

A. A person commits child prostitution by knowingly:

1. Causing any minor to engage in prostitution.

2. Using any minor for the purposes of prostitution.

3. Permitting a minor who is under the person's custody or control to engage in prostitution.

4. Receiving any benefit for or on account of procuring or placing a minor in any place or in the charge or custody of any person for the purpose of prostitution.

5. Receiving any benefit pursuant to an agreement to participate in the proceeds of prostitution of a minor.

6. Financing, managing, supervising, controlling or owning, either alone or in association with others, prostitution activity involving a minor.

7. Transporting or financing the transportation of any minor with the intent that the minor engage in prostitution.

8. Providing a means by which a minor engages in prostitution.

B. A person who is at least eighteen years of age commits child prostitution by knowingly:

1. Engaging in prostitution with a minor who is under fifteen years of age.

2. Engaging in prostitution with a minor who the person knows or should have known is fifteen, sixteen or seventeen years of age.

3. Engaging in prostitution with a minor who is fifteen, sixteen or seventeen years of age.

C. It is not a defense to a prosecution under subsection A and subsection B, paragraphs 1 and 2 of this section that the other person is a peace officer posing as a minor or a person assisting a peace officer posing as a minor.

D. Notwithstanding any other law, a sentence imposed on a person for a violation of subsection A or subsection B, paragraph 2 of this section involving a minor who is fifteen, sixteen or seventeen years of age shall be consecutive to any other sentence imposed on the person at any time.

E. Child prostitution pursuant to subsection A of this section is a class 2 felony if the minor is under fifteen years of age and is punishable pursuant to section 13-705.

F. Child prostitution pursuant to subsection B, paragraph 1 of this section is a class 2 felony and is punishable pursuant to section 13-705.

G. If the minor is fifteen, sixteen or seventeen years of age, child prostitution pursuant to subsection A of this section is a class 2 felony, the person convicted shall be sentenced pursuant to this section and the person is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served or commuted. The presumptive term may be aggravated or mitigated within the range under this section pursuant to section 13-701, subsections C, D and E. The terms are as follows:

1. The term for a first offense is as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
10 years	13.5 years	24 years

2. The term for a defendant who has one historical prior felony conviction is as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
17 years	24 years	31 years

3. The term for a defendant who has two or more historical prior felony convictions is as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
24 years	31 years	38 years

H. If the minor is fifteen, sixteen or seventeen years of age, child prostitution pursuant to subsection B, paragraph 2 of this section is a class 2 felony, the person convicted shall be sentenced pursuant to this section and the person is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served or commuted. The presumptive term may be aggravated or mitigated within the range under this section pursuant to section 13-701, subsections C, D and E. The terms are as follows:

1. The term for a first offense is as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
___7 years	10.5 years	21 years

2. The term for a defendant who has one historical prior felony conviction is as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
___14 years	15.75 years	28 years

3. The term for a defendant who has two or more historical prior felony convictions is as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
21 years	28 years	35 years

I. Child prostitution pursuant to subsection B, paragraph 3 of this section is a class 6 felony. If the court sentences the person to a term of probation, the court shall order that as an initial term of probation the person be imprisoned in the county jail for not less than one hundred eighty consecutive days. This jail term shall commence on the date of sentencing. The court may suspend ninety days of the jail sentence if the person has not previously been convicted of a violation of this section, a violation of section 13-3214 or a violation of any city or town ordinance that prohibits prostitution and that has the same or substantially similar elements as section 13-3214 and the person successfully completes an appropriate court ordered education or treatment program.

J. This section does not preclude the state from alleging and proving any other sentencing enhancements as provided by law.

13-3623. Child or vulnerable adult abuse; emotional abuse; classification; exceptions; definitions

A. Under circumstances likely to produce death or serious physical injury, any person who causes a child or vulnerable adult to suffer physical injury or, having the care or custody of a child or vulnerable adult, who causes or permits the person or health of the child or vulnerable adult to be injured or who causes or

permits a child or vulnerable adult to be placed in a situation where the person or health of the child or vulnerable adult is endangered is guilty of an offense as follows:

1. If done intentionally or knowingly, the offense is a class 2 felony and if the victim is under fifteen years of age it is punishable pursuant to section 13-705.
2. If done recklessly, the offense is a class 3 felony.
3. If done with criminal negligence, the offense is a class 4 felony.

B. Under circumstances other than those likely to produce death or serious physical injury to a child or vulnerable adult, any person who causes a child or vulnerable adult to suffer physical injury or abuse or, having the care or custody of a child or vulnerable adult, who causes or permits the person or health of the child or vulnerable adult to be injured or who causes or permits a child or vulnerable adult to be placed in a situation where the person or health of the child or vulnerable adult is endangered is guilty of an offense as follows:

1. If done intentionally or knowingly, the offense is a class 4 felony.
2. If done recklessly, the offense is a class 5 felony.
3. If done with criminal negligence, the offense is a class 6 felony.

C. For the purposes of subsections A and B of this section, the terms endangered and abuse include but are not limited to circumstances in which a child or vulnerable adult is permitted to enter or remain in any structure or vehicle in which volatile, toxic or flammable chemicals are found or equipment is possessed by any person for the purpose of manufacturing a dangerous drug in violation of section 13-3407, subsection A, paragraph 3 or 4. Notwithstanding any other provision of this section, a violation committed under the circumstances described in this subsection does not require that a person have care or custody of the child or vulnerable adult.

D. A person who intentionally or knowingly engages in emotional abuse of a vulnerable adult who is a patient or resident in any setting in which health care, health-related services or assistance with one or more of the activities of daily living is provided or, having the care or custody of a vulnerable adult, who intentionally or knowingly subjects or permits the vulnerable adult to be subjected to emotional abuse is guilty of a class 6 felony.

E. This section does not apply to:

1. A health care provider as defined in section 36-3201 who permits a patient to die or the patient's condition to deteriorate by not providing health care if that patient refuses that care directly or indirectly through a health care directive as defined in section 36-3201, through a surrogate pursuant to section 36-3231 or through a court appointed guardian as provided for in title 14, chapter 5, article 3.
2. A vulnerable adult who is being furnished spiritual treatment through prayer alone and who would not otherwise be considered to be abused, neglected or endangered if medical treatment were being furnished.

F. For the purposes of this section:

1. "Abuse", when used in reference to a child, means abuse as defined in section 8-201, except for those acts in the definition that are declared unlawful by another statute of this title and, when used in reference to a vulnerable adult, means:

- (a) Intentional infliction of physical harm.
- (b) Injury caused by criminally negligent acts or omissions.
- (c) Unlawful imprisonment, as described in section 13-1303.
- (d) Sexual abuse or sexual assault.

2. "Child" means an individual who is under eighteen years of age.

3. "Emotional abuse" means a pattern of ridiculing or demeaning a vulnerable adult, making derogatory remarks to a vulnerable adult, verbally harassing a vulnerable adult or threatening to inflict physical or emotional harm on a vulnerable adult.

4. "Physical injury" means the impairment of physical condition and includes any skin bruising, pressure sores, bleeding, failure to thrive, malnutrition, dehydration, burns, fracture of any bone, subdural hematoma, soft tissue swelling, injury to any internal organ or any physical condition that imperils health or welfare.

5. "Serious physical injury" means physical injury that creates a reasonable risk of death or that causes serious or permanent disfigurement, serious impairment of health or loss or protracted impairment of the function of any bodily organ or limb.

6. "Vulnerable adult" means an individual who is eighteen years of age or older and who is unable to protect himself from abuse, neglect or exploitation by others because of a mental or physical impairment.

8-201. Definitions

In this title, unless the context otherwise requires:

1. "Abandoned" means the failure of the parent to provide reasonable support and to maintain regular contact with the child, including providing normal supervision. Abandoned includes a judicial finding that a parent has made only minimal efforts to support and communicate with the child. Failure to maintain a normal parental relationship with the child without just cause for a period of six months constitutes prima facie evidence of abandonment.

2. "Abuse" means the infliction or allowing of physical injury, impairment of bodily function or disfigurement or the infliction of or allowing another person to cause serious emotional damage as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior and which emotional damage is diagnosed by a medical doctor or psychologist and is caused by the acts or omissions of an individual who has the care, custody and control of a child. Abuse includes:

- (a) Inflicting or allowing sexual abuse pursuant to section 13-1404, sexual conduct with a minor pursuant to section 13-1405, sexual assault pursuant to section 13-1406, molestation of a child pursuant to section 13-1410, commercial sexual exploitation of a minor pursuant to section 13-3552, sexual exploitation of a

minor pursuant to section 13-3553, incest pursuant to section 13-3608 or child prostitution pursuant to section 13-3212.

(b) Physical injury that results from permitting a child to enter or remain in any structure or vehicle in which volatile, toxic or flammable chemicals are found or equipment is possessed by any person for the purpose of manufacturing a dangerous drug as defined in section 13-3401.

(c) Unreasonable confinement of a child.

3. "Adult" means a person who is eighteen years of age or older.

4. "Adult court" means the appropriate justice court, municipal court or criminal division of the superior court that has jurisdiction to hear proceedings concerning offenses committed by juveniles as provided in sections 8-327 and 13-501.

5. "Award" or "commit" means to assign legal custody.

6. "Child", "youth" or "juvenile" means an individual who is under the age of eighteen years.

7. "Complaint" means a written statement of the essential facts constituting a public offense that is any of the following:

(a) Made on an oath before a judge or commissioner of the superior court or an authorized juvenile hearing officer.

(b) Made pursuant to section 13-3903.

(c) Accompanied by an affidavit of a law enforcement officer or employee that swears on information and belief to the accuracy of the complaint pursuant to section 13-4261.

8. "Criminal conduct allegation" means an allegation of conduct by a parent, guardian or custodian of a child or an adult member of the victim's household that, if true, would constitute any of the following:

(a) A violation of section 13-3623 involving child abuse.

(b) A felony offense that constitutes domestic violence as defined in section 13-3601.

(c) A violation of section 13-1404 or 13-1406 involving a minor.

(d) A violation of section 13-1405, 13-1410 or 13-1417.

(e) Any other act of abuse that is classified as a felony.

(f) An offense that constitutes domestic violence as defined in section 13-3601 and that involves a minor who is a victim of or was in imminent danger during the domestic violence.

9. "Custodian" means a person, other than a parent or legal guardian, who stands in loco parentis to the child or a person to whom legal custody of the child has been given by order of the juvenile court.

10. "DCS report" means a communication received by the centralized intake hotline that alleges child abuse or neglect and that meets the criteria for a report as prescribed in section 8-455.

11. "Delinquency hearing" means a proceeding in the juvenile court to determine whether a juvenile has committed a specific delinquent act as set forth in a petition.

12. "Delinquent act" means an act by a juvenile that if committed by an adult would be a criminal offense or a petty offense, a violation of any law of this state, or of another state if the act occurred in that state, or a law of the United States, or a violation of any law that can only be violated by a minor and that has been designated as a delinquent offense, or any ordinance of a city, county or political subdivision of this state defining crime. Delinquent act does not include an offense under section 13-501, subsection A or B if the offense is filed in adult court. Any juvenile who is prosecuted as an adult or who is remanded for prosecution as an adult shall not be adjudicated as a delinquent juvenile for the same offense.

13. "Delinquent juvenile" means a child who is adjudicated to have committed a delinquent act.

14. "Department" means the department of child safety.

15. "Dependent child":

(a) Means a child who is adjudicated to be:

(i) In need of proper and effective parental care and control and who has no parent or guardian, or one who has no parent or guardian willing to exercise or capable of exercising such care and control.

(ii) Destitute or who is not provided with the necessities of life, including adequate food, clothing, shelter or medical care.

(iii) A child whose home is unfit by reason of abuse, neglect, cruelty or depravity by a parent, a guardian or any other person having custody or care of the child.

(iv) Under eight years of age and who is found to have committed an act that would result in adjudication as a delinquent juvenile or incorrigible child if committed by an older juvenile or child.

(v) Incompetent or not restorable to competency and who is alleged to have committed a serious offense as defined in section 13-706.

(b) Does not include a child who in good faith is being furnished Christian Science treatment by a duly accredited practitioner if none of the circumstances described in subdivision (a) of this paragraph exists.

16. "Detention" means the temporary confinement of a juvenile who requires secure care in a physically restricting facility that is completely surrounded by a locked and physically secure barrier with restricted ingress and egress for the protection of the juvenile or the community pending court disposition or as a condition of probation.

17. "Director" means the director of the department.

18. "Health professional" has the same meaning prescribed in section 32-3201.

19. "Incorrigible child" means a child who:

- (a) Is adjudicated as a child who refuses to obey the reasonable and proper orders or directions of a parent, guardian or custodian and who is beyond the control of that person.
- (b) Is habitually truant from school as defined in section 15-803, subsection C.
- (c) Is a runaway from the child's home or parent, guardian or custodian.
- (d) Habitually behaves in such a manner as to injure or endanger the morals or health of self or others.
- (e) Commits any act constituting an offense that can only be committed by a minor and that is not designated as a delinquent act.
- (f) Fails to obey any lawful order of a court of competent jurisdiction given in a noncriminal action.

20. "Independent living program" includes a residential program with supervision of less than twenty-four hours a day.

21. "Juvenile court" means the juvenile division of the superior court when exercising its jurisdiction over children in any proceeding relating to delinquency, dependency or incorrigibility.

22. "Law enforcement officer" means a peace officer, sheriff, deputy sheriff, municipal police officer or constable.

23. "Medical director of a mental health agency" means a psychiatrist, or licensed physician experienced in psychiatric matters, who is designated in writing by the governing body of the agency as the person in charge of the medical services of the agency, or a psychiatrist designated by the governing body to act for the director. The term includes the superintendent of the state hospital.

24. "Mental health agency" means any private or public facility that is licensed by this state as a mental health treatment agency, a psychiatric hospital, a psychiatric unit of a general hospital or a residential treatment center for emotionally disturbed children and that uses secure settings or mechanical restraints.

25. "Neglect" or "neglected" means:

- (a) The inability or unwillingness of a parent, guardian or custodian of a child to provide that child with supervision, food, clothing, shelter or medical care if that inability or unwillingness causes unreasonable risk of harm to the child's health or welfare, except if the inability of a parent, guardian or custodian to provide services to meet the needs of a child with a disability or chronic illness is solely the result of the unavailability of reasonable services.
- (b) Permitting a child to enter or remain in any structure or vehicle in which volatile, toxic or flammable chemicals are found or equipment is possessed by any person for the purposes of manufacturing a dangerous drug as defined in section 13-3401.
- (c) A determination by a health professional that a newborn infant was exposed prenatally to a drug or substance listed in section 13-3401 and that this exposure was not the result of a medical treatment administered to the mother or the newborn infant by a health professional. This subdivision does not

expand a health professional's duty to report neglect based on prenatal exposure to a drug or substance listed in section 13-3401 beyond the requirements prescribed pursuant to section 13-3620, subsection E. The determination by the health professional shall be based on one or more of the following:

- (i) Clinical indicators in the prenatal period including maternal and newborn presentation.
 - (ii) History of substance use or abuse.
 - (iii) Medical history.
 - (iv) Results of a toxicology or other laboratory test on the mother or the newborn infant.
- (d) Diagnosis by a health professional of an infant under one year of age with clinical findings consistent with fetal alcohol syndrome or fetal alcohol effects.
- (e) Deliberate exposure of a child by a parent, guardian or custodian to sexual conduct as defined in section 13-3551 or to sexual contact, oral sexual contact or sexual intercourse as defined in section 13-1401, bestiality as prescribed in section 13-1411 or explicit sexual materials as defined in section 13-3507.
- (f) Any of the following acts committed by the child's parent, guardian or custodian with reckless disregard as to whether the child is physically present:
- (i) Sexual contact as defined in section 13-1401.
 - (ii) Oral sexual contact as defined in section 13-1401.
 - (iii) Sexual intercourse as defined in section 13-1401.
 - (iv) Bestiality as prescribed in section 13-1411.
26. "Newborn infant" means a child who is under thirty days of age.
27. "Petition" means a written statement of the essential facts that allege delinquency, incorrigibility or dependency.
28. "Prevention" means the creation of conditions, opportunities and experiences that encourage and develop healthy, self-sufficient children and that occur before the onset of problems.
29. "Protective supervision" means supervision that is ordered by the juvenile court of children who are found to be dependent or incorrigible.
30. "Referral" means a report that is submitted to the juvenile court and that alleges that a child is dependent or incorrigible or that a juvenile has committed a delinquent or criminal act.
31. "Secure care" means confinement in a facility that is completely surrounded by a locked and physically secure barrier with restricted ingress and egress.

32. "Serious emotional injury" means an injury that is diagnosed by a medical doctor or a psychologist and that does any one or a combination of the following:

(a) Seriously impairs mental faculties.

(b) Causes serious anxiety, depression, withdrawal or social dysfunction behavior to the extent that the child suffers dysfunction that requires treatment.

(c) Is the result of sexual abuse pursuant to section 13-1404, sexual conduct with a minor pursuant to section 13-1405, sexual assault pursuant to section 13-1406, molestation of a child pursuant to section 13-1410, child prostitution pursuant to section 13-3212, commercial sexual exploitation of a minor pursuant to section 13-3552, sexual exploitation of a minor pursuant to section 13-3553 or incest pursuant to section 13-3608.

33. "Serious physical injury" means an injury that is diagnosed by a medical doctor and that does any one or a combination of the following:

(a) Creates a reasonable risk of death.

(b) Causes serious or permanent disfigurement.

(c) Causes significant physical pain.

(d) Causes serious impairment of health.

(e) Causes the loss or protracted impairment of an organ or limb.

(f) Is the result of sexual abuse pursuant to section 13-1404, sexual conduct with a minor pursuant to section 13-1405, sexual assault pursuant to section 13-1406, molestation of a child pursuant to section 13-1410, child prostitution pursuant to section 13-3212, commercial sexual exploitation of a minor pursuant to section 13-3552, sexual exploitation of a minor pursuant to section 13-3553 or incest pursuant to section 13-3608.

34. "Shelter care" means the temporary care of a child in any public or private facility or home that is licensed by this state and that offers a physically nonsecure environment that is characterized by the absence of physically restricting construction or hardware and that provides the child access to the surrounding community.

41-1072. Definitions

In this article, unless the context otherwise requires:

1. "Administrative completeness review time frame" means the number of days from agency receipt of an application for a license until an agency determines that the application contains all components required by statute or rule, including all information required to be submitted by other government agencies. The administrative completeness review time frame does not include the period of time during which an agency provides public notice of the license application or performs a substantive review of the application.

2. "Overall time frame" means the number of days after receipt of an application for a license during which an agency determines whether to grant or deny a license. The overall time frame consists of both the administrative completeness review time frame and the substantive review time frame.

3. "Substantive review time frame" means the number of days after the completion of the administrative completeness review time frame during which an agency determines whether an application or applicant for a license meets all substantive criteria required by statute or rule. Any public notice and hearings required by law shall fall within the substantive review time frame.

8-505. Issuance of licenses; application; investigation; renewal

A. The issuance of initial and renewal licenses for child welfare agencies shall be made by the division.

B. A child welfare agency shall not receive any child for care or maintenance or for placement in a foster home unless the agency is licensed by the division. Application for a license shall be made on a form prescribed by the division.

C. The division shall, before issuing a license to an agency, investigate the activities and standards of care of the agency, its financial stability, the character and training of the applicant, the need for such agency, and the adequacy of its intended services to insure the welfare of children. A provisional license may be issued to any agency whose services are needed but which is temporarily unable to conform to the established standards of care. If the applicant meets the standards as established by the division a regular license shall be issued for a period of one year.

D. Each license shall state in general terms the kind of child welfare service the licensee is authorized to undertake, the number of children that can be received if the licensee is a private agency, their ages and sex, and, if authorized to place and supervise children in foster homes, the geographical area the agency is equipped to serve.

E. Every license shall expire one year from the date of issuance, and may be renewed annually on application of the agency, except that provisional licenses may be issued for not more than six months from the date of issuance and may not be renewed.

8-804. Central registry; notification

A. The department shall maintain a central registry of reports of child abuse and neglect that are substantiated and the outcome of the investigation of these reports made under this article. A finding made by a court pursuant to section 8-844, subsection C that a child is dependent based on an allegation of abuse or neglect shall be recorded as a substantiated finding of abuse or neglect. The department shall incorporate duplicate reports on the same incident in the original report and shall not classify duplicate reports as new reports.

B. The department shall conduct central registry background checks and shall use the information contained in the central registry only for the following purposes:

- 1. As a factor to determine qualifications for foster home licensing, adoptive parent certification, child care home certification, registration of unregulated child care homes with the child care resource and referral system, and home and community based services certification for services to children or vulnerable adults.**
- 2. As a factor to determine qualifications for persons who are employed or who are applying for employment with this state in positions that provide direct service to children or vulnerable adults.**
- 3. As a factor to determine qualifications for positions that provide direct service to children or vulnerable adults for:**
 - (a) Any person who applies for a contract with this state and that person's employees.**
 - (b) All employees of a contractor.**
 - (c) A subcontractor of a contractor and the subcontractor's employees.**
 - (d) Prospective employees of the contractor or subcontractor at the request of the prospective employer.**

4. Beginning August 1, 2013, to provide information to licensees that do not contract with this state regarding persons who are employed or seeking employment to provide direct services to children pursuant to title 36, chapter 7.1.
 5. To identify and review reports concerning individual children and families, in order to facilitate the assessment of safety and risk.
 6. To determine the nature and scope of child abuse and neglect in this state and to provide statewide statistical and demographic information concerning trends in child abuse and neglect.
 7. To allow comparisons of this state's statistical data with national data.
 8. To comply with section 8-804.01, subsection B.
- C. Beginning August 1, 2013, licensees that do not contract with the state and that employ persons who provide direct services to children pursuant to title 36, chapter 7.1 must submit to the department of child safety in a manner prescribed by the department of child safety information necessary to conduct central registry background checks. The department of health services shall verify whether licensees, pursuant to title 36, chapter 7.1, have complied with the requirements of this subsection and any rules adopted by the department of health services to implement this subsection.
- D. If the department of economic security received a report before September 1, 1999 and determined that the report was substantiated, the department of child safety shall maintain the report in the central registry until eighteen years from the child victim's date of birth.
- E. If the department of economic security or the department of child safety received a report on or after September 1, 1999 and determined that the report was substantiated, the department of child safety shall maintain the report in the central registry for a maximum of twenty-five years after the date of the report. If the department of child safety maintains reports in the central registry for less than twenty-five years, the department shall adopt rules to designate the length of time it must maintain those reports in the central registry.
- F. The department shall annually purge reports and investigative outcomes received pursuant to the time frames prescribed in subsections D and E of this section.
- G. Any person who was the subject of a department investigation may request confirmation that the department has purged information about the person pursuant to subsection F of this section. On receipt of this request, the department shall provide the person with written confirmation that the department has no record containing identifying information about that person.
- H. The department shall notify a person, contractor or licensee identified in subsection B, paragraph 3, subdivisions (a), (b) and (c) and subsection B, paragraph 4 of this section who is disqualified because of a central registry check conducted pursuant to subsection B of this section that the person may apply to the board of fingerprinting for a central registry exception pursuant to section 41-619.57.
- I. Before being employed in a position that provides direct services to children or vulnerable adults pursuant to subsection B, paragraphs 3 and 4 or subsection C of this section, employees shall certify, under penalty of perjury, on forms that are provided by the department whether an allegation of abuse or neglect was made against them and was substantiated. The forms are confidential. If this certification does not indicate a current investigation or a substantiated report of abuse or neglect, the employee may provide direct services pending the findings of the central registry check.
- J. A person who is granted a central registry exception pursuant to section 41-619.57 is not entitled to a contract, employment, licensure, certification or other benefit because the person has been granted a central registry exception.
- K. An agency of this state that conducts central registry background checks as a factor to determine qualifications for positions that provide direct services to children or vulnerable adults shall publish a list of disqualifying acts of substantiated abuse or neglect.
- L. An agency of this state that conducts central registry background checks may provide information contained in the central registry on all reports of child abuse and neglect that are substantiated and the outcomes of the investigations of the reports to carry out the provisions of this section. Identifying information regarding any person other than the perpetrator may not be released. Information received pursuant to this section may not be further disseminated unless authorized by law or court order.

36-405. Powers and duties of the director

A. The director shall adopt rules to establish minimum standards and requirements for the construction, modification and licensure of health care institutions necessary to assure the public health, safety and welfare. The standards and requirements shall relate to the construction, equipment, sanitation, staffing for medical, nursing and personal care services, and record keeping pertaining to the administration of medical, nursing, behavioral health and personal care services, in accordance with generally accepted practices of health care. The director shall use the current standards adopted by the joint commission on accreditation of hospitals and the commission on accreditation of the American osteopathic association or those adopted by any recognized accreditation organization approved by the department as guidelines in prescribing minimum standards and requirements under this section.

B. The director, by rule, may:

1. Classify and subclassify health care institutions according to character, size, range of services provided, medical or dental specialty offered, duration of care and standard of patient care required for the purposes of licensure. Classes of health care institutions may include hospitals, infirmaries, outpatient treatment centers, health screening services centers and residential care facilities. Whenever the director reasonably deems distinctions in rules and standards to be appropriate among different classes or subclasses of health care institutions, the director may make such distinctions.
2. Prescribe standards for determining a health care institution's substantial compliance with licensure requirements.
3. Prescribe the criteria for the licensure inspection process.
4. Prescribe standards for the selection of health care related demonstration projects.
5. Establish and collect nonrefundable fees for health care institutions for license applications, initial licenses, renewal licenses and architectural drawing reviews.

C. The director, by rule, shall adopt licensing provisions that facilitate the colocation and integration of outpatient treatment centers that provide medical, nursing and health-related services with behavioral health services consistent with article 3.1 of this chapter.

D. Ninety percent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the health services licensing fund established by section 36-414 and ten percent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

E. Subsection B, paragraph 5 of this section does not apply to a health care institution operated by a state agency pursuant to state or federal law or to adult foster care residential settings.

32-1401. Definitions

In this chapter, unless the context otherwise requires:

1. "Active license" means a valid and existing license to practice medicine.
2. "Adequate records" means legible medical records, produced by hand or electronically, containing, at a minimum, sufficient information to identify the patient, support the diagnosis, justify the treatment, accurately document the results, indicate advice and cautionary warnings provided to the patient and provide sufficient information for another practitioner to assume continuity of the patient's care at any point in the course of treatment.
3. "Advisory letter" means a nondisciplinary letter to notify a licensee that either:
 - (a) While there is insufficient evidence to support disciplinary action, the board believes that continuation of the activities that led to the investigation may result in further board action against the licensee.

(b) The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.

(c) While the licensee has demonstrated substantial compliance through rehabilitation or remediation that has mitigated the need for disciplinary action, the board believes that repetition of the activities that led to the investigation may result in further board action against the licensee.

4. "Approved hospital internship, residency or clinical fellowship program" means a program at a hospital that at the time the training occurred was legally incorporated and that had a program that was approved for internship, fellowship or residency training by the accreditation council for graduate medical education, the association of American medical colleges, the royal college of physicians and surgeons of Canada or any similar body in the United States or Canada approved by the board whose function is that of approving hospitals for internship, fellowship or residency training.

5. "Approved school of medicine" means any school or college offering a course of study that, on successful completion, results in the degree of doctor of medicine and whose course of study has been approved or accredited by an educational or professional association, recognized by the board, including the association of American medical colleges, the association of Canadian medical colleges or the American medical association.

6. "Board" means the Arizona medical board.

7. "Completed application" means that the applicant has supplied all required fees, information and correspondence requested by the board on forms and in a manner acceptable to the board.

8. "Direct supervision" means that a physician, physician assistant licensed pursuant to chapter 25 of this title or nurse practitioner certified pursuant to chapter 15 of this title is within the same room or office suite as the medical assistant in order to be available for consultation regarding those tasks the medical assistant performs pursuant to section 32-1456.

9. "Dispense" means the delivery by a doctor of medicine of a prescription drug or device to a patient, except for samples packaged for individual use by licensed manufacturers or repackagers of drugs, and includes the prescribing, administering, packaging, labeling and security necessary to prepare and safeguard the drug or device for delivery.

10. "Doctor of medicine" means a natural person holding a license, registration or permit to practice medicine pursuant to this chapter.

11. "Full-time faculty member" means a physician who is employed full time as a faculty member while holding the academic position of assistant professor or a higher position at an approved school of medicine.

12. "Health care institution" means any facility as defined in section 36-401, any person authorized to transact disability insurance, as defined in title 20, chapter 6, article 4 or 5, any person who is issued a certificate of authority pursuant to title 20, chapter 4, article 9 or any other partnership, association or corporation that provides health care to consumers.

13. "Immediate family" means the spouse, natural or adopted children, father, mother, brothers and sisters of the doctor and the natural or adopted children, father, mother, brothers and sisters of the doctor's spouse.

14. "Letter of reprimand" means a disciplinary letter that is issued by the board and that informs the physician that the physician's conduct violates state or federal law and may require the board to monitor the physician.

15. "Limit" means taking a nondisciplinary action that alters the physician's practice or professional activities if the board determines that there is evidence that the physician is or may be mentally or physically unable to safely engage in the practice of medicine.

16. "Medical assistant" means an unlicensed person who meets the requirements of section 32-1456, has completed an education program approved by the board, assists in a medical practice under the supervision of a doctor of medicine, physician assistant or nurse practitioner and performs delegated procedures commensurate with the assistant's education and training but does not diagnose, interpret, design or modify established treatment programs or perform any functions that would violate any statute applicable to the practice of medicine.

17. "Medical peer review" means:

(a) The participation by a doctor of medicine in the review and evaluation of the medical management of a patient and the use of resources for patient care.

(b) Activities relating to a health care institution's decision to grant or continue privileges to practice at that institution.

18. "Medically incompetent" means a person who the board determines is incompetent based on a variety of factors, including:

(a) A lack of sufficient medical knowledge or skills, or both, to a degree likely to endanger the health of patients.

(b) When considered with other indications of medical incompetence, failing to obtain a scaled score of at least seventy-five percent on the written special purpose licensing examination.

19. "Medicine" means allopathic medicine as practiced by the recipient of a degree of doctor of medicine.

20. "Office based surgery" means a medical procedure conducted in a physician's office or other outpatient setting that is not part of a licensed hospital or licensed ambulatory surgical center.

21. "Physician" means a doctor of medicine who is licensed pursuant to this chapter.

22. "Practice of medicine" means the diagnosis, the treatment or the correction of or the attempt or the claim to be able to diagnose, treat or correct any and all human diseases, injuries, ailments, infirmities or deformities, physical or mental, real or imaginary, by any means, methods, devices or instrumentalities, except as the same may be among the acts or persons not affected by this chapter. The practice of medicine includes the practice of medicine alone or the practice of surgery alone, or both.

23. "Restrict" means taking a disciplinary action that alters the physician's practice or professional activities if the board determines that there is evidence that the physician is or may be medically incompetent or guilty of unprofessional conduct.

24. "Special purpose licensing examination" means an examination that is developed by the national board of medical examiners on behalf of the federation of state medical boards for use by state licensing boards to test the basic medical competence of physicians who are applying for licensure and who have been in practice for a considerable period of time in another jurisdiction and to determine the competence of a physician who is under investigation by a state licensing board.

25. "Teaching hospital's accredited graduate medical education program" means that the hospital is incorporated and has an internship, fellowship or residency training program that is accredited by the accreditation council for graduate medical education, the American medical association, the association of American medical colleges, the royal college of physicians and surgeons of Canada or a similar body in the United States or Canada that is approved by the board and whose function is that of approving hospitals for internship, fellowship or residency training.

26. "Teaching license" means a valid license to practice medicine as a full-time faculty member of an approved school of medicine or a teaching hospital's accredited graduate medical education program.

27. "Unprofessional conduct" includes the following, whether occurring in this state or elsewhere:

- (a) Violating any federal or state laws, rules or regulations applicable to the practice of medicine.
- (b) Intentionally disclosing a professional secret or intentionally disclosing a privileged communication except as either act may otherwise be required by law.
- (c) False, fraudulent, deceptive or misleading advertising by a doctor of medicine or the doctor's staff, employer or representative.
- (d) Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by any court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.
- (e) Failing or refusing to maintain adequate records on a patient.
- (f) Habitual intemperance in the use of alcohol or habitual substance abuse.
- (g) Using controlled substances except if prescribed by another physician for use during a prescribed course of treatment.
- (h) Prescribing or dispensing controlled substances to members of the physician's immediate family.
- (i) Prescribing, dispensing or administering schedule II controlled substances as defined in section 36-2513 including amphetamines and similar schedule II sympathomimetic drugs in the treatment of exogenous obesity for a period in excess of thirty days in any one year, or the nontherapeutic use of injectable amphetamines.
- (j) Prescribing, dispensing or administering any controlled substance or prescription-only drug for other than accepted therapeutic purposes.
- (k) Signing a blank, undated or predated prescription form.

- (l) Conduct that the board determines is gross malpractice, repeated malpractice or any malpractice resulting in the death of a patient.
- (m) Representing that a manifestly incurable disease or infirmity can be permanently cured, or that any disease, ailment or infirmity can be cured by a secret method, procedure, treatment, medicine or device, if this is not true.
- (n) Refusing to divulge to the board on demand the means, method, procedure, modality of treatment or medicine used in the treatment of a disease, injury, ailment or infirmity.
- (o) Action that is taken against a doctor of medicine by another licensing or regulatory jurisdiction due to that doctor's mental or physical inability to engage safely in the practice of medicine or the doctor's medical incompetence or for unprofessional conduct as defined by that jurisdiction and that corresponds directly or indirectly to an act of unprofessional conduct prescribed by this paragraph. The action taken may include refusing, denying, revoking or suspending a license by that jurisdiction or a surrendering of a license to that jurisdiction, otherwise limiting, restricting or monitoring a licensee by that jurisdiction or placing a licensee on probation by that jurisdiction.
- (p) Sanctions imposed by an agency of the federal government, including restricting, suspending, limiting or removing a person from the practice of medicine or restricting that person's ability to obtain financial remuneration.
- (q) Any conduct or practice that is or might be harmful or dangerous to the health of the patient or the public.
- (r) Violating a formal order, probation, consent agreement or stipulation issued or entered into by the board or its executive director under this chapter.
- (s) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision of this chapter.
- (t) Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of medicine or if applying for privileges or renewing an application for privileges at a health care institution.
- (u) Charging a fee for services not rendered or dividing a professional fee for patient referrals among health care providers or health care institutions or between these providers and institutions or a contractual arrangement that has the same effect. This subdivision does not apply to payments from a medical researcher to a physician in connection with identifying and monitoring patients for a clinical trial regulated by the United States food and drug administration.
- (v) Obtaining a fee by fraud, deceit or misrepresentation.
- (w) Charging or collecting a clearly excessive fee. In determining whether a fee is clearly excessive, the board shall consider the fee or range of fees customarily charged in this state for similar services in light of modifying factors such as the time required, the complexity of the service and the skill requisite to perform the service properly. This subdivision does not apply if there is a clear written contract for a fixed fee between the physician and the patient that has been entered into before the provision of the service.
- (x) Conduct that is in violation of section 36-2302.

(y) The use of experimental forms of diagnosis and treatment without adequate informed patient consent, and without conforming to generally accepted experimental criteria, including protocols, detailed records, periodic analysis of results and periodic review by a medical peer review committee as approved by the United States food and drug administration or its successor agency.

(z) Engaging in sexual conduct with a current patient or with a former patient within six months after the last medical consultation unless the patient was the licensee's spouse at the time of the contact or, immediately preceding the physician-patient relationship, was in a dating or engagement relationship with the licensee. For the purposes of this subdivision, "sexual conduct" includes:

(i) Engaging in or soliciting sexual relationships, whether consensual or nonconsensual.

(ii) Making sexual advances, requesting sexual favors or engaging in any other verbal conduct or physical contact of a sexual nature.

(iii) Intentionally viewing a completely or partially disrobed patient in the course of treatment if the viewing is not related to patient diagnosis or treatment under current practice standards.

(aa) Procuring or attempting to procure a license to practice medicine or a license renewal by fraud, by misrepresentation or by knowingly taking advantage of the mistake of another person or an agency.

(bb) Representing or claiming to be a medical specialist if this is not true.

(cc) Maintaining a professional connection with or lending one's name to enhance or continue the activities of an illegal practitioner of medicine.

(dd) Failing to furnish information in a timely manner to the board or the board's investigators or representatives if legally requested by the board.

(ee) Failing to allow properly authorized board personnel on demand to examine and have access to documents, reports and records maintained by the physician that relate to the physician's medical practice or medically related activities.

(ff) Knowingly failing to disclose to a patient on a form that is prescribed by the board and that is dated and signed by the patient or guardian acknowledging that the patient or guardian has read and understands that the doctor has a direct financial interest in a separate diagnostic or treatment agency or in nonroutine goods or services that the patient is being prescribed if the prescribed treatment, goods or services are available on a competitive basis. This subdivision does not apply to a referral by one doctor of medicine to another doctor of medicine within a group of doctors of medicine practicing together.

(gg) Using chelation therapy in the treatment of arteriosclerosis or as any other form of therapy, with the exception of treatment of heavy metal poisoning, without:

(i) Adequate informed patient consent.

(ii) Conforming to generally accepted experimental criteria, including protocols, detailed records, periodic analysis of results and periodic review by a medical peer review committee.

(iii) Approval by the United States food and drug administration or its successor agency.

(hh) Prescribing, dispensing or administering anabolic-androgenic steroids to a person for other than therapeutic purposes.

(ii) Lack of or inappropriate direction, collaboration or direct supervision of a medical assistant or a licensed, certified or registered health care provider employed by, supervised by or assigned to the physician.

(jj) Knowingly making a false or misleading statement to the board or on a form required by the board or in a written correspondence, including attachments, with the board.

(kk) Failing to dispense drugs and devices in compliance with article 6 of this chapter.

(ll) Conduct that the board determines is gross negligence, repeated negligence or negligence resulting in harm to or the death of a patient.

(mm) The representation by a doctor of medicine or the doctor's staff, employer or representative that the doctor is boarded or board certified if this is not true or the standing is not current or without supplying the full name of the specific agency, organization or entity granting this standing.

(nn) Refusing to submit to a body fluid examination or any other examination known to detect the presence of alcohol or other drugs as required by the board pursuant to section 32-1452 or pursuant to a board investigation into a doctor of medicine's alleged substance abuse.

(oo) Failing to report in writing to the Arizona medical board or the Arizona regulatory board of physician assistants any evidence that a doctor of medicine or a physician assistant is or may be medically incompetent, guilty of unprofessional conduct or mentally or physically unable to safely practice medicine or to perform as a physician assistant.

(pp) The failure of a physician who is the chief executive officer, the medical director or the medical chief of staff of a health care institution to report in writing to the board that the hospital privileges of a doctor of medicine have been denied, revoked, suspended, supervised or limited because of actions by the doctor that appear to show that the doctor is or may be medically incompetent, is or may be guilty of unprofessional conduct or is or may be unable to engage safely in the practice of medicine.

(qq) Claiming to be a current member of the board or its staff or a board medical consultant if this is not true.

(rr) Failing to make patient medical records in the physician's possession promptly available to a physician assistant, a nurse practitioner, a person licensed pursuant to this chapter or a podiatrist, chiropractor, naturopathic physician, osteopathic physician or homeopathic physician licensed under chapter 7, 8, 14, 17 or 29 of this title on receipt of proper authorization to do so from the patient, a minor patient's parent, the patient's legal guardian or the patient's authorized representative or failing to comply with title 12, chapter 13, article 7.1.

(ss) Prescribing, dispensing or furnishing a prescription medication or a prescription-only device as defined in section 32-1901 to a person unless the licensee first conducts a physical or mental health status examination of that person or has previously established a doctor-patient relationship. The physical or mental health status examination may be conducted during a real-time telemedicine encounter with audio and video capability if the telemedicine audio and video capability meets the elements required by the centers for medicare and medicaid services, unless the examination is for the purpose of obtaining a

written certification from the physician for the purposes of title 36, chapter 28.1. This subdivision does not apply to:

(i) A physician who provides temporary patient supervision on behalf of the patient's regular treating licensed health care professional or provides a consultation requested by the patient's regular treating licensed health care professional.

(ii) Emergency medical situations as defined in section 41-1831.

(iii) Prescriptions written to prepare a patient for a medical examination.

(iv) Prescriptions written or prescription medications issued for use by a county or tribal public health department for immunization programs or emergency treatment or in response to an infectious disease investigation, public health emergency, infectious disease outbreak or act of bioterrorism. For the purposes of this item, "bioterrorism" has the same meaning prescribed in section 36-781.

(v) Prescriptions written or antimicrobials dispensed to a contact as defined in section 36-661 who is believed to have had significant exposure risk as defined in section 36-661 with another person who has been diagnosed with a communicable disease as defined in section 36-661 by the prescribing or dispensing physician.

(vi) Prescriptions written or prescription medications issued for administration of immunizations or vaccines listed in the United States centers for disease control and prevention's recommended immunization schedule to a household member of a patient.

(vii) Prescriptions for epinephrine auto-injectors written or dispensed for a school district or charter school to be stocked for emergency use pursuant to section 15-157 or for an authorized entity to be stocked pursuant to section 36-2226.01.

(viii) Prescriptions written by a licensee through a telemedicine program that is covered by the policies and procedures adopted by the administrator of a hospital or outpatient treatment center.

(ix) Prescriptions for naloxone hydrochloride or any other opioid antagonist approved by the United States food and drug administration that are written or dispensed for use pursuant to section 36-2228 or 36-2266.

(tt) Performing office based surgery using sedation in violation of board rules.

(uu) Practicing medicine under a false or assumed name in this state.

32-1800. Definitions

In this chapter, unless the context otherwise requires:

1. "Active license" means a valid license to practice medicine and includes the license of a licensee who has been placed on probation or on whose license the board has placed restrictions.

2. "Address of record" means either:

(a) The address where a person who is regulated pursuant to this chapter practices medicine or is otherwise employed.

(b) The residential address of a person who is regulated pursuant to this chapter if that person has made a written request to the board that the board use that address as the address of record.

3. "Adequate records" means legible medical records containing, at a minimum, sufficient information to identify the patient, support the diagnosis, justify the treatment, accurately document the results, indicate advice and cautionary warnings provided to the patient and provide sufficient information for another licensed health care practitioner to assume continuity of the patient's care at any point in the course of treatment.
4. "Administrative warning" means a disciplinary action by the board in the form of a written warning to a physician of a violation of this chapter involving patient care that the board determines falls below the community standard.
5. "Approved postgraduate training program" means that an applicant for licensure successfully completed training when the hospital or other facility in which the training occurred was approved for a postgraduate internship, residency or fellowship by the American osteopathic association or by the accreditation council for graduate medical education.
6. "Approved school of osteopathic medicine" means a school or college offering a course of study that, on successful completion, results in the awarding of the degree of doctor of osteopathy and whose course of study has been approved or accredited by the American osteopathic association.
7. "Board" means the Arizona board of osteopathic examiners in medicine and surgery.
8. "Decree of censure" means a formal written reprimand by the board of a physician for a violation of this chapter that constitutes a disciplinary action against a physician's license.
9. "Direct supervision" means that a physician is within the same room or office suite as the unlicensed person in order to be available for consultation regarding those tasks the unlicensed person performs pursuant to section 32-1859.
10. "Dispense" means the delivery by a physician of a prescription drug or device to a patient, except for samples packaged for individual use by licensed manufacturers or repackagers of drugs, and includes the prescribing, administering, packaging, labeling and security necessary to prepare and safeguard the drug or device for delivery.
11. "Doctor of osteopathy" means a person who holds a license, registration or permit to practice medicine pursuant to this chapter.
12. "Immediate family" means the spouse, natural or adopted children, father, mother, brothers and sisters of the physician and the natural and adopted children, father, mother, brothers and sisters of the physician's spouse.
13. "Inappropriate fee" means a fee that is not supported by documentation of time, complexity or extreme skill required to perform the service.
14. "Investigative hearing" means a meeting between the board and a physician to discuss issues set forth in the investigative hearing notice and during which the board may hear statements from board staff, the complainant, the physician and witnesses, if any.
15. "Letter of concern" means an advisory letter to notify a physician that while there is insufficient evidence to support disciplinary action against the physician's license there is sufficient evidence for the board to notify the physician of its concern.
16. "Limited license" means a license that restricts the scope and setting of a licensee's practice.
17. "Medical assistant" means an unlicensed person who has completed an educational program approved by the board, who assists in a medical practice under the supervision of a doctor of osteopathic medicine and who performs delegated procedures commensurate with the assistant's education and training but who does not diagnose, interpret, design or modify established treatment programs or violate any statute.
18. "Medicine" means osteopathic medicine as practiced by a person who receives a degree of doctor of osteopathy.
19. "Physician" means a doctor of osteopathy who holds a license, a permit or a locum tenens registration to practice osteopathic medicine pursuant to this chapter.
20. "Practice of medicine" or "practice of osteopathic medicine" means all of the following:
 - (a) To examine, diagnose, treat, prescribe for, palliate, prevent or correct human diseases, injuries, ailments, infirmities and deformities, physical or mental conditions, real or imaginary, by the use of

drugs, surgery, manipulation, electricity or any physical, mechanical or other means as provided by this chapter.

(b) Suggesting, recommending, prescribing or administering any form of treatment, operation or healing for the intended palliation, relief or cure of any physical or mental disease, ailment, injury, condition or defect.

(c) The practice of osteopathic medicine alone or the practice of osteopathic surgery or osteopathic manipulative therapy, or any combination of either practice.

21. "Specialist" means a physician who has successfully completed postdoctoral training in an approved postgraduate training program, an approved preceptorship or an approved residency or who is board certified by a specialty board approved by the board.

22. "Subscription provider of health care" means an entity that, through contractual agreement, is responsible for the payment, in whole or in part, of debts incurred by a person for medical or other health care services.

32-2501. Definitions

In this chapter, unless the context otherwise requires:

1. "Active license" means a regular license issued pursuant to this chapter.

2. "Adequate records" means legible medical records containing, at a minimum, sufficient information to identify the patient, support the diagnosis, justify the treatment, accurately document the results, indicate advice and cautionary warnings provided to the patient and provide sufficient information for another practitioner to assume continuity of the patient's care at any point in the course of treatment.

3. "Advisory letter" means a nondisciplinary letter to notify a physician assistant that either:

(a) While there is insufficient evidence to support disciplinary action, the board believes that continuation of the activities that led to the investigation may result in further board action against the licensee.

(b) The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.

(c) While the licensee has demonstrated substantial compliance through rehabilitation or remediation that has mitigated the need for disciplinary action, the board believes that repetition of the activities that led to the investigation may result in further board action against the licensee.

4. "Approved program" means a physician assistant educational program accredited by the accreditation review commission on education for physician assistants, or one of its predecessor agencies, the committee on allied health education and accreditation or the commission on the accreditation of allied health educational programs.

5. "Board" means the Arizona regulatory board of physician assistants.

6. "Completed application" means an application for which the applicant has supplied all required fees, information and correspondence requested by the board on forms and in a manner acceptable to the board.

7. "Immediate family" means the spouse, natural or adopted children, father, mother, brothers and sisters of the physician assistant and the natural or adopted children, father, mother, brothers and sisters of the physician assistant's spouse.

8. "Letter of reprimand" means a disciplinary letter that is issued by the board and that informs the physician assistant that the physician assistant's conduct violates state or federal law and may require the board to monitor the physician assistant.

9. "Limit" means a nondisciplinary action that is taken by the board and that alters a physician assistant's practice or medical activities if there is evidence that the physician assistant is or may be mentally or physically unable to safely engage in health care tasks.

10. "Medically incompetent" means that a physician assistant lacks sufficient medical knowledge or skills, or both, in performing delegated health care tasks to a degree likely to endanger the health or safety of patients.

11. "Minor surgery" means those invasive procedures that may be delegated to a physician assistant by a supervising physician, that are consistent with the training and experience of the physician assistant, that are normally taught in courses of training approved by the board and that have been approved by the

board as falling within a scope of practice of a physician assistant. Minor surgery does not include a surgical abortion.

12. "Physician" means a physician who is licensed pursuant to chapter 13 or 17 of this title.

13. "Physician assistant" means a person who is licensed pursuant to this chapter and who practices medicine with physician supervision.

14. "Regular license" means a valid and existing license issued pursuant to section 32-2521 to perform health care tasks.

15. "Restrict" means a disciplinary action that is taken by the board and that alters a physician assistant's practice or medical activities if there is evidence that the physician assistant is or may be medically incompetent or guilty of unprofessional conduct.

16. "Supervising physician" means a physician who holds a current unrestricted license, who supervises a physician assistant and who assumes legal responsibility for health care tasks performed by the physician assistant.

17. "Supervision" means a physician's opportunity or ability to provide or exercise direction and control over the services of a physician assistant. Supervision does not require a physician's constant physical presence if the supervising physician is or can be easily in contact with the physician assistant by telecommunication.

18. "Unprofessional conduct" includes the following acts by a physician assistant that occur in this state or elsewhere:

(a) Violation of any federal or state law or rule that applies to the performance of health care tasks as a physician assistant. Conviction in any court of competent jurisdiction is conclusive evidence of a violation.

(b) Claiming to be a physician or knowingly permitting another person to represent that person as a physician.

(c) Performing health care tasks that have not been delegated by the supervising physician.

(d) Habitual intemperance in the use of alcohol or habitual substance abuse.

(e) Signing a blank, undated or predated prescription form.

(f) Gross malpractice, repeated malpractice or any malpractice resulting in the death of a patient.

(g) Representing that a manifestly incurable disease or infirmity can be permanently cured or that a disease, ailment or infirmity can be cured by a secret method, procedure, treatment, medicine or device, if this is not true.

(h) Refusing to divulge to the board on demand the means, method, procedure, modality of treatment or medicine used in the treatment of a disease, injury, ailment or infirmity.

(i) Prescribing or dispensing controlled substances or prescription-only drugs for which the physician assistant is not approved or in excess of the amount authorized pursuant to this chapter.

(j) Any conduct or practice that is or might be harmful or dangerous to the health of a patient or the public.

(k) Violation of a formal order, probation or stipulation issued by the board.

(l) Failing to clearly disclose the person's identity as a physician assistant in the course of the physician assistant's employment.

(m) Failing to use and affix the initials "P.A." or "P.A.-C." after the physician assistant's name or signature on charts, prescriptions or professional correspondence.

(n) Procuring or attempting to procure a physician assistant license by fraud, misrepresentation or knowingly taking advantage of the mistake of another.

(o) Having professional connection with or lending the physician assistant's name to an illegal practitioner of any of the healing arts.

(p) Failing or refusing to maintain adequate records on a patient.

(q) Using controlled substances that have not been prescribed by a physician, physician assistant, dentist or nurse practitioner for use during a prescribed course of treatment.

(r) Prescribing or dispensing controlled substances to members of the physician assistant's immediate family.

- (s) Prescribing, dispensing or administering any controlled substance or prescription-only drug for other than accepted therapeutic purposes.
- (t) Knowingly making any written or oral false or fraudulent statement in connection with the performance of health care tasks or when applying for privileges or renewing an application for privileges at a health care institution.
- (u) Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.
- (v) Having a certification or license refused, revoked, suspended, limited or restricted by any other licensing jurisdiction for the inability to safely and skillfully perform health care tasks or for unprofessional conduct as defined by that jurisdiction that directly or indirectly corresponds to any act of unprofessional conduct as prescribed by this paragraph.
- (w) Having sanctions including restriction, suspension or removal from practice imposed by an agency of the federal government.
- (x) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate a provision of this chapter.
- (y) Using the term "doctor" or the abbreviation "Dr." on a name tag or in a way that leads the public to believe that the physician assistant is licensed to practice as an allopathic or an osteopathic physician in this state.
- (z) Failing to furnish legally requested information to the board or its investigator in a timely manner.
- (aa) Failing to allow properly authorized board personnel to examine on demand documents, reports and records of any kind relating to the physician assistant's performance of health care tasks.
- (bb) Knowingly making a false or misleading statement on a form required by the board or in written correspondence or attachments furnished to the board.
- (cc) Failing to submit to a body fluid examination and other examinations known to detect the presence of alcohol or other drugs pursuant to an agreement with the board or an order of the board.
- (dd) Violating a formal order, probation agreement or stipulation issued or entered into by the board or its executive director.
- (ee) Except as otherwise required by law, intentionally betraying a professional secret or intentionally violating a privileged communication.
- (ff) Allowing the use of the licensee's name in any way to enhance or permit the continuance of the activities of, or maintaining a professional connection with, an illegal practitioner of medicine or the performance of health care tasks by a person who is not licensed pursuant to this chapter.
- (gg) False, fraudulent, deceptive or misleading advertising by a physician assistant or the physician assistant's staff or representative.
- (hh) Knowingly failing to disclose to a patient on a form that is prescribed by the board and that is dated and signed by the patient or guardian acknowledging that the patient or guardian has read and understands that the licensee has a direct financial interest in a separate diagnostic or treatment agency or in nonroutine goods or services that the patient is being prescribed and if the prescribed treatment, goods or services are available on a competitive basis. This subdivision does not apply to a referral by one physician assistant to another physician assistant or to a doctor of medicine or a doctor of osteopathy within a group working together.
- (ii) With the exception of heavy metal poisoning, using chelation therapy in the treatment of arteriosclerosis or as any other form of therapy without adequate informed patient consent or without conforming to generally accepted experimental criteria including protocols, detailed records, periodic analysis of results and periodic review by a medical peer review committee, or without approval by the United States food and drug administration or its successor agency.
- (jj) Prescribing, dispensing or administering anabolic or androgenic steroids for other than therapeutic purposes.
- (kk) Prescribing, dispensing or furnishing a prescription medication or a prescription-only device as defined in section 32-1901 to a person unless the licensee first conducts a physical examination of that

person or has previously established a professional relationship with the person. This subdivision does not apply to:

- (i) A physician assistant who provides temporary patient care on behalf of the patient's regular treating licensed health care professional.
- (ii) Emergency medical situations as defined in section 41-1831.
- (iii) Prescriptions written to prepare a patient for a medical examination.
- (iv) Prescriptions written or antimicrobials dispensed to a contact as defined in section 36-661 who is believed to have had significant exposure risk as defined in section 36-661 with another person who has been diagnosed with a communicable disease as defined in section 36-661 by the prescribing or dispensing physician assistant.
- (II) Engaging in sexual conduct with a current patient or with a former patient within six months after the last medical consultation unless the patient was the licensee's spouse at the time of the contact or, immediately preceding the professional relationship, was in a dating or engagement relationship with the licensee. For the purposes of this subdivision, "sexual conduct" includes:
 - (i) Engaging in or soliciting sexual relationships, whether consensual or nonconsensual.
 - (ii) Making sexual advances, requesting sexual favors or engaging in other verbal conduct or physical contact of a sexual nature with a patient.
 - (iii) Intentionally viewing a completely or partially disrobed patient in the course of treatment if the viewing is not related to patient diagnosis or treatment under current practice standards.
 - (mm) Performing health care tasks under a false or assumed name in this state.

32-1601. Definitions

In this chapter, unless the context otherwise requires:

1. "Absolute discharge from the sentence" means completion of any sentence, including imprisonment, probation, parole, community supervision or any form of court supervision.
2. "Approval" means that a regulated training or educational program to prepare persons for licensure, certification or registration has met standards established by the board.
3. "Board" means the Arizona state board of nursing.
4. "Certified nursing assistant" means a person who is registered on the registry of nursing assistants pursuant to this chapter to provide or assist in the delivery of nursing or nursing-related services under the supervision and direction of a licensed nursing staff member. Certified nursing assistant does not include a person who:
 - (a) Is a licensed health care professional.
 - (b) Volunteers to provide nursing assistant services without monetary compensation.
 - (c) Is a licensed nursing assistant.
5. "Certified registered nurse" means a registered nurse who has been certified by a national nursing credentialing agency recognized by the board.
6. "Certified registered nurse anesthetist" means a registered nurse who meets the requirements of section 32-1634.03 and who practices pursuant to the requirements of section 32-1634.04.

7. "Clinical nurse specialist" means a registered nurse who:

- (a) Is certified by the board as a clinical nurse specialist.
- (b) Holds a graduate degree with a major in nursing and completes educational requirements as prescribed by the board by rule.
- (c) Is nationally certified as a clinical nurse specialist or, if certification is not available, provides proof of competence to the board.
- (d) Has an expanded scope of practice based on advanced education in a clinical nursing specialty that includes:
 - (i) Assessing clients, synthesizing and analyzing data and understanding and applying nursing principles at an advanced level.
 - (ii) Managing directly and indirectly a client's physical and psychosocial health status.
 - (iii) Analyzing multiple sources of data, identifying alternative possibilities as to the nature of a health care problem and selecting appropriate nursing interventions.
 - (iv) Developing, planning and guiding programs of care for populations of patients.
 - (v) Making independent nursing decisions to solve complex client care problems.
 - (vi) Using research skills and acquiring and applying critical new knowledge and technologies to nursing practice.
 - (vii) Prescribing and dispensing durable medical equipment.
 - (viii) Consulting with or referring a client to other health care providers based on assessment of the client's health status and needs.
 - (ix) Facilitating collaboration with other disciplines to attain the desired client outcome across the continuum of care.
 - (x) Performing additional acts that require education and training as prescribed by the board and that are recognized by the nursing profession as proper to be performed by a clinical nurse specialist.

8. "Conditional license" or "conditional approval" means a license or approval that specifies the conditions under which the regulated party is allowed to practice or to operate and that is prescribed by the board pursuant to section 32-1644 or 32-1663.

9. "Delegation" means transferring to a competent individual the authority to perform a selected nursing task in a designated situation in which the nurse making the delegation retains accountability for the delegation.

10. "Disciplinary action" means a regulatory sanction of a license, certificate or approval pursuant to this chapter in any combination of the following:

- (a) A civil penalty for each violation of this chapter, not to exceed one thousand dollars for each violation.
- (b) Restitution made to an aggrieved party.
- (c) A decree of censure.
- (d) A conditional license or a conditional approval that fixed a period and terms of probation.
- (e) Limited licensure.
- (f) Suspension of a license, a certificate or an approval.
- (g) Voluntary surrender of a license, a certificate or an approval.
- (h) Revocation of a license, a certificate or an approval.

11. "Health care institution" has the same meaning prescribed in section 36-401.

12. "Licensed nursing assistant" means a person who is licensed pursuant to this chapter to provide or assist in the delivery of nursing or nursing-related services under the supervision and direction of a licensed nursing staff member. Licensed nursing assistant does not include a person who:

- (a) Is a licensed health care professional.
- (b) Volunteers to provide nursing assistant services without monetary compensation.
- (c) Is a certified nursing assistant.

13. "Licensee" means a person who is licensed pursuant to this chapter or in a party state as defined in section 32-1668.

14. "Limited license" means a license that restricts the scope or setting of a licensee's practice.

15. "Medication order" means a written or verbal communication given by a certified registered nurse anesthetist to a health care professional to administer a drug or medication.

16. "Practical nurse" means a person who holds a practical nurse license issued pursuant to this chapter or pursuant to a multistate compact privilege and who practices practical nursing as defined in this section.

17. "Practical nursing" includes the following activities that are performed under the supervision of a physician or a registered nurse:

- (a) Contributing to the assessment of the health status of individuals and groups.
- (b) Participating in the development and modification of the strategy of care.
- (c) Implementing aspects of the strategy of care within the nurse's scope of practice.

- (d) Maintaining safe and effective nursing care that is rendered directly or indirectly.
- (e) Participating in the evaluation of responses to interventions.
- (f) Delegating nursing activities within the scope of practice of a practical nurse.
- (g) Performing additional acts that require education and training as prescribed by the board and that are recognized by the nursing profession as proper to be performed by a practical nurse.

18. "Presence" means within the same room or an adjoining room or within the same surgical or obstetrical suite.

19. "Registered nurse" or "professional nurse" means a person who practices registered nursing and who holds a registered nurse license issued pursuant to this chapter or pursuant to a multistate compact privilege.

20. "Registered nurse practitioner" means a registered nurse who:

- (a) Is certified by the board.
- (b) Has completed a nurse practitioner education program approved or recognized by the board and educational requirements prescribed by the board by rule.
- (c) If applying for certification after July 1, 2004, holds national certification as a nurse practitioner from a national certifying body recognized by the board.
- (d) Has an expanded scope of practice within a specialty area that includes:
 - (i) Assessing clients, synthesizing and analyzing data and understanding and applying principles of health care at an advanced level.
 - (ii) Managing the physical and psychosocial health status of clients.
 - (iii) Analyzing multiple sources of data, identifying alternative possibilities as to the nature of a health care problem and selecting, implementing and evaluating appropriate treatment.
 - (iv) Making independent decisions in solving complex client care problems.
 - (v) Diagnosing, performing diagnostic and therapeutic procedures, and prescribing, administering and dispensing therapeutic measures, including legend drugs, medical devices and controlled substances within the scope of registered nurse practitioner practice on meeting the requirements established by the board.
 - (vi) Recognizing the limits of the nurse's knowledge and experience and planning for situations beyond the nurse's knowledge, educational preparation and expertise by consulting with or referring clients to other health care providers when appropriate.
 - (vii) Delegating to a medical assistant pursuant to section 32-1456.

(viii) Performing additional acts that require education and training as prescribed by the board and that are recognized by the nursing profession as proper to be performed by a nurse practitioner.

21. "Registered nursing" includes the following:

- (a) Diagnosing and treating human responses to actual or potential health problems.
- (b) Assisting individuals and groups to maintain or attain optimal health by implementing a strategy of care to accomplish defined goals and evaluating responses to care and treatment.
- (c) Assessing the health status of individuals and groups.
- (d) Establishing a nursing diagnosis.
- (e) Establishing goals to meet identified health care needs.
- (f) Prescribing nursing interventions to implement a strategy of care.
- (g) Delegating nursing interventions to others who are qualified to do so.
- (h) Providing for the maintenance of safe and effective nursing care that is rendered directly or indirectly.
- (i) Evaluating responses to interventions.
- (j) Teaching nursing knowledge and skills.
- (k) Managing and supervising the practice of nursing.
- (l) Consulting and coordinating with other health care professionals in the management of health care.
- (m) Performing additional acts that require education and training as prescribed by the board and that are recognized by the nursing profession as proper to be performed by a registered nurse.

22. "Registry of nursing assistants" means the nursing assistants registry maintained by the board pursuant to the omnibus budget reconciliation act of 1987 (P.L. 100-203; 101 Stat. 1330), as amended by the medicare catastrophic coverage act of 1988 (P.L. 100-360; 102 Stat. 683).

23. "Regulated party" means any person or entity that is licensed, certified, registered, recognized or approved pursuant to this chapter.

24. "Unprofessional conduct" includes the following, whether occurring in this state or elsewhere:

- (a) Committing fraud or deceit in obtaining, attempting to obtain or renewing a license or a certificate issued pursuant to this chapter.
- (b) Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.

- (c) Aiding or abetting in a criminal abortion or attempting, agreeing or offering to procure or assist in a criminal abortion.
- (d) Any conduct or practice that is or might be harmful or dangerous to the health of a patient or the public.
- (e) Being mentally incompetent or physically unsafe to a degree that is or might be harmful or dangerous to the health of a patient or the public.
- (f) Having a license, certificate, permit or registration to practice a health care profession denied, suspended, conditioned, limited or revoked in another jurisdiction and not reinstated by that jurisdiction.
- (g) Wilfully or repeatedly violating a provision of this chapter or a rule adopted pursuant to this chapter.
- (h) Committing an act that deceives, defrauds or harms the public.
- (i) Failing to comply with a stipulated agreement, consent agreement or board order.
- (j) Violating this chapter or a rule that is adopted by the board pursuant to this chapter.
- (k) Failing to report to the board any evidence that a registered or practical nurse or a nursing assistant is or may be:
 - (i) Incompetent to practice.
 - (ii) Guilty of unprofessional conduct.
 - (iii) Mentally or physically unable to safely practice nursing or to perform nursing related duties. A nurse who is providing therapeutic counseling for a nurse who is in a drug rehabilitation program is required to report that nurse only if the nurse providing therapeutic counseling has personal knowledge that patient safety is being jeopardized.
- (l) Failing to self-report a conviction for a felony or undesignated offense within ten days after the conviction.
- (m) Cheating or assisting another to cheat on a licensure or certification examination.

8-506. Denial, suspension or revocation of license; foster home; hearing

The division may deny the application or suspend or revoke the license of any foster home for wilful violation of any provision of this article or failure to maintain the standards of the care prescribed by the division. Written notice of the grounds of the suspension or the proposed denial or revocation shall be given to the applicant or holder of the license. A copy of the written notice of the suspension or the proposed denial or revocation shall be forwarded to the agency that recommended the foster home for licensing. Within twenty-five days after the mailing date of the written notice of proposed denial, revocation or suspension, the applicant or holder may request a hearing in accordance with the rules of the division. If the hearing is requested it shall be held within ten days of the request, at which time the applicant or holder shall have the right to present testimony and confront witnesses.

41-2142. Definitions

In this chapter, unless the context otherwise requires:

1. "Accessory structure" means the installation, assembly, connection or construction of any one-story habitable room, storage room, patio, porch, garage, carport, awning, skirting, retaining wall, evaporative cooler, refrigeration air conditioning system, solar system or wood decking attached to a new or used manufactured home, mobile home or residential single family factory-built building.
2. "Act" means the national manufactured home construction and safety standards act of 1974 and title VI of the housing and community development act of 1974 (P.L. 93-383, as amended by P.L. 95-128, 95-557, 96-153 and 96-339).
3. "Alteration of units" means the replacement, addition, modification or removal of any equipment or installation after the sale by a manufacturer to a dealer or distributor but prior to the sale by a dealer to a purchaser, which may affect compliance with the standards, construction, fire safety, occupancy, plumbing or heat-producing or electrical system. Alteration does not mean the repair or replacement of a component or appliance requiring plug-in to an electrical receptacle if the replaced item is of the same configuration and rating as the component or appliance being repaired or replaced. Alteration also does not mean the addition of an appliance requiring plug-in to an electrical receptacle if such appliance is not provided with the unit by the manufacturer and the rating of the appliance does not exceed the rating of the receptacle to which such appliance is connected.
4. "Board" means the board of manufactured housing.
5. "Broker" means any person who, on behalf of another, sells, exchanges, buys, offers or attempts to negotiate or acts as an agent for the sale or exchange of a used manufactured home or mobile home except as exempted in section 41-2178.
6. "Component" means any part, material or appliance which is built-in as an integral part of the unit during the manufacturing process.
7. "Consumer" means either a purchaser or seller of a unit regulated by this chapter who utilizes the services of a person licensed by the department.
8. "Consummation of sale" means that a purchaser has received all goods and services that the dealer or broker agreed to provide at the time the contract was entered into or the transfer of title. Consummation of sale does not include warranties.

9. "Dealer" means any person who sells, exchanges, buys, offers or attempts to negotiate or acts as an agent for the sale or exchange of factory-built buildings, subassemblies, manufactured homes or mobile homes except as exempted in section 41-2178. A lease or rental agreement by which the user acquired ownership of the unit with or without additional remuneration is considered a sale under this chapter.

10. "Defect" means any defect in the performance, construction, components or material of a unit that renders the unit or any part of the unit unfit for the ordinary use for which it was intended.

11. "Department" means the department of fire, building and life safety.

12. "Director" means the director of the department.

13. "Earnest monies" means all monies given by a purchaser or a financial institution to a dealer or broker before consummation of the sale.

14. "Factory-built building" means a residential or nonresidential building including a dwelling unit or habitable room thereof which is either wholly or in substantial part manufactured at an off-site location to be assembled on-site, except that it does not include a manufactured home, recreational vehicle or mobile home as defined in this section.

15. "HUD" means the United States department of housing and urban development.

16. "Imminent safety hazard" means an imminent and unreasonable risk of death or severe personal injury.

17. "Insignia of approval" means a numbered or serialized label or seal issued by the deputy director of the office of manufactured housing as certification of compliance with this chapter.

18. "Installation" means:

(a) Connecting new or used mobile homes, manufactured homes or factory-built buildings to on-site utility terminals or repairing these utility connections.

(b) Placing new or used mobile homes, manufactured homes, accessory structures or factory-built buildings on foundation systems or repairing these foundation systems.

(c) Providing ground anchoring for new or used mobile homes or manufactured homes or repairing the ground anchoring.

19. "Installation supervision" means that the installer may act as an installer of accessory structures for manufactured homes, mobile homes or residential single family factory-built buildings and may also contract with the purchaser or owner of a unit, or a dealer licensed under this chapter, to arrange for, control and supervise all aspects of the installation of a unit and accessory structures, including retaining and supervising persons whose activities are licensed under this chapter. A licensed installer may not contract with the purchaser or owner of a unit or with a dealer licensed under this chapter, to arrange for, retain and supervise a person who is licensed or regulated by an agency other than the office of manufactured housing, unless the licensed installer is also licensed by the same agency which licenses or regulates the person whom the installer retains and supervises. Installation supervision also includes the installer's right, if authorized by the purchaser, owner or dealer, to seek and obtain recourse, remedies or relief against all persons whose activities are supervised. If requested by a licensed installer or an applicant for an installer's license, and approved by the deputy director pursuant to sections 41-2175 and 41-2176, an installer may obtain a license that includes installation supervision.

20. "Installer" means any person who engages in the business of performing installations of manufactured homes, mobile homes or residential single family factory-built buildings.

21. "Installer of accessory structures" means any person who engages in the business of installing accessory structures.

22. "Listing agreement" means a document which contains the name and address of the seller, a description of the unit to be listed and the terms which include the period of time that the agreement is in force, the price the seller is requesting for the unit, the commission to be paid to the licensee and the signatures of the sellers and the licensee who obtains the listing.

23. "Local enforcement agency" means a zoning or building department of a city, town or county or its agents.

24. "Manufactured home" means a structure built in accordance with the act.

25. "Manufacturer" means any person engaged in manufacturing, assembling or reconstructing any unit regulated by this chapter.

26. "Mobile home" means a structure built prior to June 15, 1976, on a permanent chassis, capable of being transported in one or more sections and designed to be used with or without a permanent foundation as a dwelling when connected to on-site utilities except recreational vehicles and factory-built buildings.

27. "Purchaser" means a person purchasing a unit in good faith from a licensed dealer or broker for purposes other than resale.

28. "Qualifying party" means a person who is an owner, employee, corporate officer or partner of the licensed business and who has active and direct supervision of and responsibility for all operations of that licensed business.

29. "Reconstruction of a unit" means construction work performed for the purpose of restoration or modification of a unit by changing or adding structural components or electrical, plumbing or heat or air producing systems.

30. "Recreational vehicle" means a vehicular type unit which is:

(a) A portable camping trailer mounted on wheels and constructed with collapsible partial sidewalls which fold for towing by another vehicle and unfold for camping.

(b) A motor home designed to provide temporary living quarters for recreational, camping or travel use and built on or permanently attached to a self-propelled motor vehicle chassis or on a chassis cab or van that is an integral part of the completed vehicle.

(c) A park trailer built on a single chassis, mounted on wheels and designed to be connected to utilities necessary for operation of installed fixtures and appliances and has a gross trailer area of not less than three hundred twenty square feet and not more than four hundred square feet when it is set up, except that it does not include fifth wheel trailers.

(d) A travel trailer mounted on wheels, designed to provide temporary living quarters for recreational, camping or travel use, of a size or weight that may or may not require special highway movement permits when towed by a motorized vehicle and has a trailer area of less than three hundred twenty square feet. This subdivision includes fifth wheel trailers. If a unit requires a size or weight permit, it shall be manufactured to the standards for park trailers in A 119.5 of the American national standards institute code.

(e) A portable truck camper constructed to provide temporary living quarters for recreational, travel or camping use and consisting of a roof, floor and sides designed to be loaded onto and unloaded from the bed of a pickup truck.

31. "Salesperson" means any person who, for a salary, commission or compensation of any kind, is employed by or acts on behalf of any dealer or broker of manufactured homes, mobile homes or factory-

built buildings to sell, exchange, buy, offer or attempt to negotiate or act as an agent for the sale or exchange of an interest in a manufactured home, mobile home or factory-built building.

32. "Seller" means a natural person who enters into a listing agreement with a licensed dealer or broker for the purpose of resale.

33. "Site development" means the development of an area for the installation of the unit's or units' locations, parking, surface drainage, driveways, on-site utility terminals and property lines at a proposed construction site or area.

34. "Statutory agent" means an adult person who has been a bona fide resident of this state for at least three years and has agreed to act as agent for a licensee.

35. "Subassembly" means a prefabricated wall, floor, ceiling, roof or similar combination of components.

36. "Title transfer" means a true copy of the application for title transfer which is stamped or validated by the appropriate government agency.

37. "Unit" means a manufactured home, mobile home, factory-built building, subassembly or accessory structures.

38. "Unit safety" means the performance of a unit in such a manner that the public is protected against any unreasonable risk of the occurrence of accidents due to the design or construction of such unit, or any unreasonable risk of death or injury to the user or to the public if such accidents occur.

39. "Used unit" means any unit which is regulated by this chapter and which has been sold, bargained, exchanged or given away from a purchaser who first acquired the unit which was titled in the name of such purchaser.

40. "Workmanship" means a minimum standard of construction or installation reflecting a journeyman quality of the work of the various trades.

8-806. Voluntary placement; conditions; notice of placement; time limit; rules

A. A child is eligible to be accepted into voluntary placement by a child safety worker on behalf of the department.

B. On acceptance of a child into voluntary placement, the worker must prepare a notice of placement and file the notice in the case file of the child.

C. A period of voluntary placement pursuant to this section shall not exceed ninety days. A worker shall not accept a child into voluntary placement for more than two periods within twenty-four consecutive months unless a dependency petition is pending.

D. The department may accept a voluntary placement agreement only if the department can provide necessary services that are likely to remedy the circumstances that bring the child into care within the ninety day period and one of the following applies:

1. The department plans to return the child to the parent, guardian or custodian who signed the child into voluntary placement.

2. While the child is in voluntary placement, the parent, guardian or custodian arranges a safe alternative placement for the child after the voluntary placement.

E. A worker shall not accept a child into voluntary placement without the written informed consent of the child's parent, guardian or custodian. The department shall terminate voluntary placement on receipt of written revocation of consent by the parent, guardian or custodian.

F. A worker shall not accept a child, age twelve or older and not with a developmental disability, into voluntary placement without the written informed consent of the child unless the department determines that voluntary placement of the child is clearly necessary to prevent abuse.

G. The fact of voluntary placement does not constitute abandonment, abuse or dependency as defined in this article and may not be used in a judicial proceeding as an admission of criminal wrongdoing by that parent, guardian or custodian.

H. The department shall adopt rules in accordance with title 41, chapter 6 for the purpose of assessing parents for the full or partial cost of voluntary placement.

I. The department must develop a case plan with the child's parent, guardian or custodian within ten days of a child's voluntary placement as follows:

1. The case plan shall establish the services necessary to promote the safety of the child on the planned return of the child to the parent, guardian, custodian or alternative placement.

2. The department shall provide, contract with a service provider to provide or assist in accessing community resources to provide the services in the case plan.

3. The department must share the case plan with the foster parent, physical custodian or other voluntary placement provider of the child.

J. Before returning the child to a parent, guardian, custodian or alternative placement, the department shall inform the parent, guardian, custodian or alternative placement about available financial and nonfinancial services and eligibility requirements and shall assist the parent, guardian, custodian or alternative placement to complete the necessary applications.

46-141. Criminal record information checks; fingerprinting employees and applicants; definition

A. Each license granted by the department of economic security or the department of child safety and each contract entered into between the department of economic security or the department of child safety and any contract provider for the provision of services to juveniles or vulnerable adults shall provide that, as a condition of employment, personnel who are employed by the licensee or contractor, whether paid or not, and who are required or allowed to provide services directly to juveniles or vulnerable adults shall have a valid fingerprint clearance card issued pursuant to section 41-1758.07 or shall apply for a fingerprint clearance card within seven working days of employment.

B. The licensee or contractor shall assume the costs of fingerprint checks and may charge these costs to its fingerprinted personnel. The department of economic security or the department of child safety may allow all or part of the costs of fingerprint checks to be included as an allowable cost in a contract.

C. A service contract or license with any contract provider or licensee that involves the employment of persons who have contact with juveniles or vulnerable adults shall provide that the contract or license may be canceled or terminated immediately if a person certifies pursuant to subsections F and G of this section that the person is awaiting trial on or has been convicted of any of the offenses listed in subsections F and G of this section in this state or similar offenses in another state or jurisdiction or if the person does not possess or is denied issuance of a valid fingerprint clearance card.

D. A contract provider or licensee may avoid cancellation or termination of the contract or license under subsection C of this section if a person who does not possess or has been denied issuance of a valid fingerprint clearance card or who certifies pursuant to subsections F and G of this section that the person has been convicted of or is awaiting trial on any of the offenses listed in section 41-1758.07, subsection B

is immediately prohibited from employment or service with the contract provider or licensee in any capacity requiring or allowing contact with juveniles or vulnerable adults.

E. A contract provider or licensee may avoid cancellation or termination of the contract or license under subsection C of this section if a person who does not possess or has been denied issuance of a valid fingerprint clearance card or who certifies pursuant to subsections F and G of this section that the person has been convicted of or is awaiting trial on any of the offenses listed in section 41-1758.07, subsection C is immediately prohibited from employment or service with the contract provider or licensee in any capacity requiring contact with juveniles or vulnerable adults unless the person is granted a good cause exception pursuant to section 41-619.55.

F. Personnel who are employed by any contract provider or licensee, whether paid or not, and who are required or allowed to provide services directly to juveniles or vulnerable adults shall certify on forms provided by the department of economic security or the department of child safety and notarized whether they are awaiting trial on or have ever been convicted of any of the criminal offenses listed in section 41-1758.07, subsections B and C in this state or similar offenses in another state or jurisdiction.

G. Personnel who are employed by any contract provider or licensee, whether paid or not, and who are required or allowed to provide services directly to juveniles shall certify on forms provided by the department of economic security or the department of child safety and notarized whether they have ever committed any act of sexual abuse of a child, including sexual exploitation and commercial sexual exploitation, or any act of child abuse.

H. Federally recognized Indian tribes or military bases may submit and the department of economic security and the department of child safety shall accept certifications that state that personnel who are employed or who will be employed during the contract term have not been convicted of, have not admitted committing or are not awaiting trial on any offense under subsection F of this section.

I. A person who applies to the department of economic security or the department of child safety for a license or certificate or for paid or unpaid employment, including contract services, and who will provide direct services to juveniles or vulnerable adults shall submit a full set of fingerprints to the department for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation. This subsection does not apply to those persons who are subject to section 8-105, 8-509, 8-802 or 41-1968 or subsection A of this section.

J. The special services unit of the department of economic security and employees of the department of child safety may use the department of public safety automated system to update all criminal history record information in order to ensure, to the maximum extent reasonably possible, complete disposition information. The department of economic security or the department of child safety may deny employment or issuance or renewal of the contract or license applied for in these cases if it determines that the criminal history record information indicates that such employee, applicant or contractor is not qualified or suitable.

K. Volunteers who provide services to juveniles or vulnerable adults under the direct visual supervision of the contractor's or licensee's employees are exempt from the fingerprinting requirements of this section.

L. The department of economic security or the department of child safety shall notify the department of public safety if the department of economic security or the department of child safety receives credible evidence that a person who possesses a valid fingerprint clearance card pursuant to subsection A of this section either:

1. Is arrested for or charged with an offense listed in section 41-1758.07, subsection B or C.
2. Falsified information on the form required by subsection F of this section.

M. For the purposes of this section, "vulnerable adult" has the same meaning prescribed in section 46-451.

41-1074. Compliance with administrative completeness review time frame

A. An agency shall issue a written notice of administrative completeness or deficiencies to an applicant for a license within the administrative completeness review time frame.

B. If an agency determines that an application for a license is not administratively complete, the agency shall include a comprehensive list of the specific deficiencies in the written notice provided pursuant to subsection A. If the agency issues a written notice of deficiencies within the administrative completeness time frame, the administrative completeness review time frame and the overall time frame are suspended from the date the notice is issued until the date that the agency receives the missing information from the applicant.

C. If an agency does not issue a written notice of administrative completeness or deficiencies within the administrative completeness review time frame, the application is deemed administratively complete. If an agency issues a timely written notice of deficiencies, an application shall not be complete until all requested information has been received by the agency.

13-3620. Duty to report abuse, physical injury, neglect and denial or deprivation of medical or surgical care or nourishment of minors; medical records; exception; violation; classification; definitions

A. Any person who reasonably believes that a minor is or has been the victim of physical injury, abuse, child abuse, a reportable offense or neglect that appears to have been inflicted on the minor by other than accidental means or that is not explained by the available medical history as being accidental in nature or who reasonably believes there has been a denial or deprivation of necessary medical treatment or surgical care or nourishment with the intent to cause or allow the death of an infant who is protected under section 36-2281 shall immediately report or cause reports to be made of this information to a peace officer, to the department of child safety or to a tribal law enforcement or social services agency for any Indian minor who resides on an Indian reservation, except if the report concerns a person who does not have care, custody or control of the minor, the report shall be made to a peace officer only. A member of the clergy, a christian science practitioner or a priest who has received a confidential communication or a confession in that person's role as a member of the clergy, as a christian science practitioner or as a priest in the course of the discipline enjoined by the church to which the member of the clergy, the christian science practitioner or the priest belongs may withhold reporting of the communication or confession if the member of the clergy, the christian science practitioner or the priest determines that it is reasonable and necessary within the concepts of the religion. This exemption applies only to the communication or confession and not to personal observations the member of the clergy, the christian science practitioner or the priest may otherwise make of the minor. For the purposes of this subsection, "person" means:

1. Any physician, physician's assistant, optometrist, dentist, osteopath, chiropractor, podiatrist, behavioral health professional, nurse, psychologist, counselor or social worker who develops the reasonable belief in the course of treating a patient.

2. Any peace officer, child welfare investigator, child safety worker, member of the clergy, priest or christian science practitioner.

3. The parent, stepparent or guardian of the minor.

4. School personnel or domestic violence victim advocates who develop the reasonable belief in the course of their employment.

5. Any other person who has responsibility for the care or treatment of the minor.

B. A report is not required under this section either:

1. For conduct prescribed by sections 13-1404 and 13-1405 if the conduct involves only minors who are fourteen, fifteen, sixteen or seventeen years of age and there is nothing to indicate that the conduct is other than consensual.

2. If a minor is of elementary school age, the physical injury occurs accidentally in the course of typical playground activity during a school day, occurs on the premises of the school that the minor attends and is reported to the legal parent or guardian of the minor and the school maintains a written record of the incident.

C. If a physician, psychologist or behavioral health professional receives a statement from a person other than a parent, stepparent, guardian or custodian of the minor during the course of providing sex offender treatment that is not court ordered or that does not occur while the offender is incarcerated in the state department of corrections or the department of juvenile corrections, the physician, psychologist or behavioral health professional may withhold the reporting of that statement if the physician, psychologist or behavioral health professional determines it is reasonable and necessary to accomplish the purposes of the treatment.

D. Reports shall be made immediately either electronically or by telephone. The reports shall contain the following information, if known:

1. The names and addresses of the minor and the minor's parents or the person or persons having custody of the minor.

2. The minor's age and the nature and extent of the minor's abuse, child abuse, physical injury or neglect, including any evidence of previous abuse, child abuse, physical injury or neglect.

3. Any other information that the person believes might be helpful in establishing the cause of the abuse, child abuse, physical injury or neglect.

E. A health care professional who is regulated pursuant to title 32 and who, after a routine newborn physical assessment of a newborn infant's health status or following notification of positive toxicology screens of a newborn infant, reasonably believes that the newborn infant may be affected by the presence of alcohol or a drug listed in section 13-3401 shall immediately report this information, or cause a report to be made, to the department of child safety. For the purposes of this subsection, "newborn infant" means a newborn infant who is under thirty days of age.

F. Any person other than one required to report or cause reports to be made under subsection A of this section who reasonably believes that a minor is or has been a victim of abuse, child abuse, physical injury, a reportable offense or neglect may report the information to a peace officer or to the department of child safety, except if the report concerns a person who does not have care, custody or control of the minor, the report shall be made to a peace officer only.

G. A person who has custody or control of medical records of a minor for whom a report is required or authorized under this section shall make the records, or a copy of the records, available to a peace officer, child welfare investigator or child safety worker investigating the minor's neglect, child abuse, physical injury or abuse on written request for the records signed by the peace officer, child welfare investigator or child safety worker. Records disclosed pursuant to this subsection are confidential and may be used only in a judicial or administrative proceeding or investigation resulting from a report required or authorized under this section.

H. When reports are received by a peace officer, the officer shall immediately notify the department of child safety. Notwithstanding any other statute, when the department receives these reports, it shall immediately notify a peace officer in the appropriate jurisdiction.

I. Any person who is required to receive reports pursuant to subsection A of this section may take or cause to be taken photographs of the minor and the vicinity involved. Medical examinations of the involved minor may be performed.

J. A person who furnishes a report, information or records required or authorized under this section, or a person who participates in a judicial or administrative proceeding or investigation resulting from a report, information or records required or authorized under this section, is immune from any civil or criminal liability by reason of that action unless the person acted with malice or unless the person has been charged with or is suspected of abusing or neglecting the child or children in question.

K. Except for the attorney client privilege or the privilege under subsection L of this section, no privilege applies to any:

1. Civil or criminal litigation or administrative proceeding in which a minor's neglect, dependency, abuse, child abuse, physical injury or abandonment is an issue.
2. Judicial or administrative proceeding resulting from a report, information or records submitted pursuant to this section.
3. Investigation of a minor's child abuse, physical injury, neglect or abuse conducted by a peace officer or the department of child safety.

L. In any civil or criminal litigation in which a child's neglect, dependency, physical injury, abuse, child abuse or abandonment is an issue, a member of the clergy, a christian science practitioner or a priest shall not, without his consent, be examined as a witness concerning any confession made to him in his role as a member of the clergy, a christian science practitioner or a priest in the course of the discipline enjoined by the church to which he belongs. This subsection does not discharge a member of the clergy, a christian science practitioner or a priest from the duty to report pursuant to subsection A of this section.

M. If psychiatric records are requested pursuant to subsection G of this section, the custodian of the records shall notify the attending psychiatrist, who may excise from the records, before they are made available:

1. Personal information about individuals other than the patient.
2. Information regarding specific diagnosis or treatment of a psychiatric condition, if the attending psychiatrist certifies in writing that release of the information would be detrimental to the patient's health or treatment.

N. If any portion of a psychiatric record is excised pursuant to subsection M of this section, a court, on application of a peace officer, child welfare investigator or child safety worker, may order that the entire record or any portion of the record that contains information relevant to the reported abuse, child abuse, physical injury or neglect be made available to the peace officer, child welfare investigator or child safety worker investigating the abuse, child abuse, physical injury or neglect.

O. A person who violates this section is guilty of a class 1 misdemeanor, except if the failure to report involves a reportable offense, the person is guilty of a class 6 felony.

P. For the purposes of this section:

1. "Abuse" has the same meaning prescribed in section 8-201.

2. "Child abuse" means child abuse pursuant to section 13-3623.

3. "Neglect" has the same meaning prescribed in section 8-201.

4. "Reportable offense" means any of the following:

(a) Any offense listed in chapters 14 and 35.1 of this title or section 13-3506.01.

(b) Surreptitious photographing, videotaping, filming or digitally recording or viewing a minor pursuant to section 13-3019.

(c) Child prostitution pursuant to section 13-3212.

(d) Incest pursuant to section 13-3608.

(e) Unlawful mutilation pursuant to section 13-1214.

8-456. Investigative function; training; criminal offenses; definition

A. The department shall train all investigators in forensic interviewing and processes and the protocols established pursuant to section 8-817. The training must include:

1. Uniform safety and risk assessment tools to determine whether the conduct constitutes abuse or neglect and the severity of the abuse or neglect.

2. The duty to protect the legal and due process rights of children and families from the time of the initial contact through case closure.

3. Instruction on a child's rights as a crime victim and instruction on the legal rights of parents.

4. A checklist or other mechanism to assist the investigator in giving consideration to the relevant factors in each investigation.

B. The office of child welfare investigations shall investigate DCS reports that contain a criminal conduct allegation as provided in sections 8-471 and 8-817.

C. After receiving a DCS report from the centralized intake hotline pursuant to section 8-455, an investigator shall do all of the following:

1. Make a prompt and thorough investigation. An investigation must evaluate and determine the nature, extent and cause of any condition created by the parents, guardian or custodian or an adult member of the victim's household that would tend to support or refute the allegation that the child is a victim of abuse or

neglect and determine the name, age and condition of other children in the home. If an investigator has sufficient information to determine that the child is not a victim of abuse or neglect, the investigator may close the investigation.

2. If required by section 8-821 and subject to section 8-471, take a child into temporary custody. Law enforcement officers shall cooperate with the department to remove a child from the custody of the child's parents, guardian or custodian when necessary.

D. After an investigation, an investigator shall:

1. Determine whether any child is in need of child safety services consistent with the evaluation and determination made pursuant to subsection C of this section.

2. If appropriate pursuant to section 8-846, offer to the family of any child who is found to be a child in need of child safety services those services that are designed to correct unresolved problems that would indicate a reason to adjudicate the child dependent.

3. Submit a written report of the investigator's investigation to:

(a) The department's case management information system within a reasonable amount of time that does not exceed forty-five days after receipt of the DCS report except as provided in section 8-811. If the investigation involves allegations regarding a child who at the time of the alleged incident was in the custody of a child welfare agency licensed by the department under this title, a copy of the report and any additional investigative or other related reports must be provided to the board of directors of the agency or to the administrative head of the agency unless the incident is alleged to have been committed by the person. The department shall excise all information with regard to the identity of the source of the reports.

(b) The appropriate court forty-eight hours before a dependency hearing pursuant to a petition of dependency or within twenty-one days after a petition of dependency is filed, whichever is earlier. On receipt of the report the court shall make the report available to all parties and counsel.

4. Accept a child into voluntary placement pursuant to section 8-806.

5. Identify, promptly obtain and abide by court orders that restrict or deny custody, visitation or contact by a parent or other person in the home with the child and notify appropriate personnel in the department to preclude violations of a court order in the provision of any services.

E. In conducting an investigation pursuant to this section, if the investigator is made aware that an allegation of abuse or neglect may also have been made in another state, the investigator shall contact the appropriate agency in that state to attempt to determine the outcome of any investigation of that allegation.

F. If an investigation indicates a reason to believe that a criminal offense has been committed, the investigator shall immediately provide the information to the appropriate law enforcement agency and the office of child welfare investigations, unless the information was previously provided pursuant to section 8-455.

G. For the purposes of this section, "investigator" means an employee of the department who investigates allegations of abuse or neglect pursuant to a DCS report.

41-1092. Definitions

In this article, unless the context otherwise requires:

1. "Administrative law judge" means an individual or an agency head, board or commission that sits as an administrative law judge, that conducts administrative hearings in a contested case or an appealable agency action and that makes decisions regarding the contested case or appealable agency action.
2. "Administrative law judge decision" means the findings of fact, conclusions of law and recommendations or decisions issued by an administrative law judge.
3. "Appealable agency action" means an action that determines the legal rights, duties or privileges of a party and that is not a contested case. Appealable agency actions do not include interim orders by self-supporting regulatory boards, rules, orders, standards or statements of policy of general application issued by an administrative agency to implement, interpret or make specific the legislation enforced or administered by it or clarifications of interpretation, nor does it mean or include rules concerning the internal management of the agency that do not affect private rights or interests. For the purposes of this paragraph, administrative hearing does not include a public hearing held for the purpose of receiving public comment on a proposed agency action.
4. "Director" means the director of the office of administrative hearings.
5. "Final administrative decision" means a decision by an agency that is subject to judicial review pursuant to title 12, chapter 7, article 6.
6. "Office" means the office of administrative hearings.
7. "Self-supporting regulatory board" means any one of the following:
 - (a) The Arizona state board of accountancy.
 - (b) The state board of appraisal.
 - (c) The board of barbers.
 - (d) The board of behavioral health examiners.
 - (e) The Arizona state boxing and mixed martial arts commission.
 - (f) The state board of chiropractic examiners.
 - (g) The board of cosmetology.
 - (h) The state board of dental examiners.
 - (i) The state board of funeral directors and embalmers.
 - (j) The Arizona game and fish commission.

- (k) The board of homeopathic and integrated medicine examiners.
- (l) The Arizona medical board.
- (m) The naturopathic physicians medical board.
- (n) The state board of nursing.
- (o) The board of examiners of nursing care institution administrators and adult care home managers.
- (p) The board of occupational therapy examiners.
- (q) The state board of dispensing opticians.
- (r) The state board of optometry.
- (s) The Arizona board of osteopathic examiners in medicine and surgery.
- (t) The Arizona peace officer standards and training board.
- (u) The Arizona state board of pharmacy.
- (v) The board of physical therapy.
- (w) The state board of podiatry examiners.
- (x) The state board for private postsecondary education.
- (y) The state board of psychologist examiners.
- (z) The board of respiratory care examiners.
- (aa) The state board of technical registration.
- (bb) The Arizona state veterinary medical examining board.
- (cc) The acupuncture board of examiners.
- (dd) The Arizona regulatory board of physician assistants.
- (ee) The board of athletic training.
- (ff) The board of massage therapy.

41-1064. Licenses; renewal; revocation; suspension; annulment; withdrawal

A. When the grant, denial or renewal of a license is required to be preceded by notice and an opportunity for a hearing, the provisions of this article concerning contested cases apply.

B. When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

C. No revocation, suspension, annulment or withdrawal of any license is lawful unless, prior to the action, the agency provides the licensee with notice and an opportunity for a hearing in accordance with this chapter. If the agency finds that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

13-604. Class 6 felony; designation

A. Notwithstanding any other provision of this title, if a person is convicted of any class 6 felony not involving a dangerous offense and if the court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the opinion that it would be unduly harsh to sentence the defendant for a felony, the court may enter judgment of conviction for a class 1 misdemeanor and make disposition accordingly or may place the defendant on probation in accordance with chapter 9 of this title and refrain from designating the offense as a felony or misdemeanor until the probation is terminated. The offense shall be treated as a felony for all purposes until such time as the court may actually enter an order designating the offense a misdemeanor. This subsection does not apply to any person who stands convicted of a class 6 felony and who has previously been convicted of two or more felonies.

B. If a crime or public offense is punishable in the discretion of the court by a sentence as a class 6 felony or a class 1 misdemeanor, the offense shall be deemed a misdemeanor if the prosecuting attorney files any of the following:

1. An information in superior court designating the offense as a misdemeanor.
2. A complaint in justice court or municipal court designating the offense as a misdemeanor within the jurisdiction of the respective court.
3. A complaint, with the consent of the defendant, before or during the preliminary hearing amending the complaint to charge a misdemeanor.

F-5

ARIZONA DEPARTMENT OF TRANSPORTATION (F-16-0903)

Title 17, Chapter 4, Article 7, Hazardous Materials Endorsement



**GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT**

MEETING DATE: October 4, 2016

AGENDA ITEM: F-5

TO: Members of the Governor's Regulatory Review Council ("Council")

FROM: Marcus McGillivray, Legal Intern

DATE : September 16, 2016

SUBJECT: ARIZONA DEPARTMENT OF TRANSPORTATION (F-16-0903)
Title 17, Chapter 4, Article 7. Hazardous Materials Endorsement

COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

This five-year-review report from the Arizona Department of Transportation (Department) covers ten rules in A.A.C. Title 17, Chapter 4, Article 7, relating to the endorsement that allows the transportation of hazardous materials through the state of Arizona. These rules were last amended in April 2007. R17-4-703 and R17-4-711 were not reviewed with the intention that they expire under A.R.S. § 41-1056(J).

The Department regulates mobility within the state by controlling state-owned roadways and airports, issuing drivers licenses, and registering automobiles. Article 7, regarding the Hazardous Materials Endorsement (HME), describes the process by which individuals who possess a Commercial Drivers License (CDL) can acquire and retain an HME. Article 7 also sets forth the associated fees, the required testing, the process to request administrative hearings, and the requirements to transfer an HME from another state.

An HME is required to transport hazardous materials within the state. Hazardous Materials are defined as "a substance or material that the Secretary of Transportation has determined is capable of posing an unreasonable risk to health, safety, and property when transported in commerce." See 49 CFR 171.8.

To receive an HME, an applicant must pass a federal background check. The background check (Security Threat Assessment) required by Article 7 is issued by the Department of Homeland Security (DHS) through the Transportation Security Administration (TSA). The assessment is required under the "USA PATRIOT ACT." Furthermore, any individual who has a HME shall pass the background check every five years in order to retain the HME.

Proposed Action

Below is a summary of the rules for which the Department intends to complete a rulemaking by December 2016:

- **R17-4-701 Definitions:** The Department plans to amend the reference to 49 CFR 1562.3, which is currently inaccurate since the rule has been revised. Moreover, the Department wishes to amend the formatting to remove the numbers in front of term definitions to be consistent with the Office of the Secretary of State’s rulemaking requirements.
- **R17-4-702 Scope:** The Department plans to amend the reference to 49 CFR 172, as there have been revisions. Furthermore, the Department wishes to revise the wording to make the rule clearer and consistent.
- **R17-4-705 Required Testing:** The Department plans to amend this rule by removing the phrase “with an existing HME” after “transfer applicant,” and adding the word “any” before “applicable fee.”
- **R17-4-706 Fees:** The Department plans to change the introductory sentence “All fees applicable fees shall be paid as prescribed:” to “All applicants and transfer applicants shall pay all applicable fees as prescribed by.”
- **R17-4-707 60-Day Notice to Apply:** The Department plans to amend “division” to “department” and make “Drivers License” lowercase.
- **R17-4-709 Determination of Security Threat:** The Department plans to change “division” to “department.”
- **R17-4-710 Requests for Administrative Hearing:** The Department plans to change “division” to “department,” and change “driving privileges” to “driver license privileges.”
- **R17-4-712 Transfer Applicants:** The Department plans to remove subsections (C) and (D) because they are now unnecessary, and change subsection (B) to accurately depict the current TSA process before issuing a CDL with a HME, and spell out the acronym STA (Security Threat Assessment).

Analysis of the Department’s report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:

1. **Has the Department certified that it is in compliance with A.R.S. § 41-1091?**

Yes. The Department certifies compliance with A.R.S. § 41-1091.

2. **Has the Department analyzed the rules’ effectiveness in achieving their objectives?**

Yes. The Department believes that the rules effectively accomplish their objectives of assuring HME applicants are in compliance. However, the Department does concede that the effectiveness of R17-4-702 is undermined due to referencing a federal statute that is outdated.

3. **Has the Department received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?**

No. The Department has not received any written criticism regarding Article 7 in the last five years.

4. **Has the Department analyzed whether the rules are authorized by statute?**

Yes. A.R.S. § 28-366 provides the Department general statutory authority, which allows the director permission to adopt rules related to collecting taxes and licensing fees, public safety and convenience, and use of state highways and routes. The Department has specific statutory authority. A.R.S. § 28-3103 gives the Department authority to require licensing for HMEs and conduct background checks and take finger prints of the applicants. A.R.S. § 28-5205 gives the Department authority to adopt rules assuring safety by regulating the transportation of hazardous materials within the state.

5. **Has the Department analyzed the rules' consistency with other rules and statutes?**

Yes. The Department believes that Article 7 is generally consistent with state law. R17-4-702 does need to be updated to conform to the rulemaking requirements of the Office of the Secretary of State.

6. **Has the Department analyzed the current enforcement status of the rules?**

Yes. The Department states that they enforce the rules as written and have no problem with enforcement.

7. **Has the Department analyzed whether the rules are clear, concise, and understandable?**

Yes. The Department assures that the rules are generally clear, concise, and understandable; nonetheless, the Department is looking to amend eight of the rules in Article 7 for more clarity, efficiency, and understandability.

8. **Has the Department analyzed whether:**

a. **The rules are more stringent than corresponding federal law?**

No. The intent of Article 7 is to be consistent with federal law; and the laws are not more stringent.

b. **There is statutory authority to exceed the requirements of federal law?**

Not applicable

9. **For rules adopted after July 29, 2010, has the Department analyzed whether:**

a. **The rules require issuance of a regulatory permit, license or agency authorization?**

Not applicable, as the rules were adopted prior to July 29, 2010.

b. **It is in compliance with the general permit requirements of A.R.S. § 41-1037 or explained why it believes an exception applies?**

Not applicable.

10. **Has the Department indicated whether it completed the course of action identified in the previous five-year-review report?**

No. The Department has not completed the prior proposed course of action. In the last five-year review, the Department proposed action to change sections 701-703, 707, and 709-712. The Department contends that changes to these rules were not critical and did not impact enforceability. Moreover, the Department submitted a request to proceed with rule amendments under the rulemaking moratorium to Governor Brewer's office, but received no response. The Department re-submitted this request in September 2015, and has received permission from the Governor's office to proceed with the rulemaking.

11. **Has the Department included a proposed course of action?**

The Department has stated a planned course of action to amend eight rules in Article 7 by December 2016.

Conclusion

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. As noted above, to address issues identified in this report, the Department expects to submit a rulemaking to the Council in December 2016. This analyst recommends that the report be approved.



**GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M**

MEETING DATE: October 4, 2016

AGENDA ITEM: F-5

TO: Members of the Governor's Regulatory Review Council ("Council")

FROM: GRRC Economic Team

DATE : September 16, 2016

SUBJECT: **ARIZONA DEPARTMENT OF TRANSPORTATION (F-16-0903)**
Title 17, Chapter 4, Article 7. Hazardous Materials Endorsement

I reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

1. Economic Impact Comparison

Economic, small business, and consumer impact statements (EIS) from the most recent rulemakings were available for the Article 7 rules, which establish the requirements for a Hazardous Materials Endorsement (HME) and the required testing that correspond with obtaining an endorsement.

As of June 2, 2016, there were 19,794 valid (excluded were any credentials that were cancelled, suspended, revoked, expired, marked for deletion, disqualified, and those that indicate the credential holder is deceased) commercial driver license (CDL) holders who have successfully completed the required Transportation Security Administration (TSA) HME Security Threat Assessment. There were 188 applicants who did not successfully complete the required TSA HME Security Threat Assessment. There has been one case in which an active HME was immediately revoked as a result of a TSA HME Security Threat Assessment determination.

2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?

The Department has determined that the rules in Article 7 impose the least burden and costs to the regulated community. The cost to comply with these rules is minimal and necessary to protect public health and safety. No additional costs have been incurred as a result of these rules and costs imposed have decreased from the substantial costs originally needed to get the program implemented.

3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?

No analysis was submitted to the agency by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

4. Conclusion

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.

June 28, 2016

Ms. Nicole A. Ong, Chair
Governor's Regulatory Review Council
100 N 15th Avenue, Suite 402
Phoenix, Arizona 85007

Re: Five-year Review of 17 A.A.C. Chapter 4, Article 7

Dear Ms. Ong:

The Arizona Department of Transportation submits for Council approval the accompanying Five-year Review Report of 17 A.A.C. Chapter 4, Article 7. This document complies with all requirements under A.R.S. § 41-1056 and A.A.C. R1-6-301. The Department certifies that it is in full compliance with the requirements of A.R.S. § 41-1091.

The following rules were not reviewed with the intention that the rules will expire under A.R.S. § 41-1056(J):

- R17-4-703 General Provisions
- R17-4-711 HME on CDL Learner's Permit

For information regarding the report, please communicate directly with Candace Olson, Rules Analyst, at (602) 712-4534.

Sincerely,

A handwritten signature in blue ink that reads "John S. Halikowski".

John S. Halikowski
ADOT Director

Enclosure: ADOT 5 Year Review Report

Arizona Department of Transportation

Five-year Review Report

17 A.A.C. Chapter 4, Article 7

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Section A

Identical Information within Rule Groups

Arizona Department of Transportation
Five-year Review Report
17 A.A.C. Chapter 4, Article 7, Hazardous Materials Endorsement

Identical Information within Rule Groups

1. General and specific authority for rulemaking.

For this whole Article, the Department's general rulemaking authority is under A.R.S. § 28-366 and specific rulemaking authority is under A.R.S. §§ 28-3103 and 28-5204.

3. Effectiveness of the rules in achieving objectives.

The stated objectives of the rules in Article 7 are effectively met since the applicants are in compliance and undergo the required Transportation Security Administration (TSA) Hazardous Materials Endorsement (HME) Security Threat Assessment and there are no known issues or complaints. R17-4-702 would be more effective if the federal reference was updated to a current edition.

4. Consistent with state and federal statutes and other rules made by the Department.

The rules in Article 7 are generally consistent with state statutes and other rules made by the Department. The rules do need to be updated to reference the current edition of the federal regulations and minor technical changes could be made to make the format more consistent with the rulemaking requirements of the Office of the Secretary of State.

5. Agency enforcement policy.

The Department enforces the rules in Article 7 as written and has had no problems with enforcement.

6. Clarity, Conciseness, and Understandability.

The following two rules are clear, concise, and understandable as written and require no changes:

- R17-4-704. Requirements for an HME
- R17-4-708. Security Threat Assessment

While the following rules are generally clear, concise, and understandable, minor changes are needed for better clarity and conciseness:

- R17-4-701. Definitions
- R17-4-702. Scope
- R17-4-705. Required Testing
- R17-4-706. Fees
- R17-4-707. 60-Day Notice to Apply

- R17-4-709. Determination of Security Threat
- R17-4-710. Requests for Administrative Hearing
- R17-4-712. Transfer Applicant

7. Written criticisms of the rules received during the previous five years.

No written criticisms or analyses have been received for the rules in Article 7.

8. Estimated economic, small business, and consumer impact compared with the last rulemaking.

The economic impact of the rules in Article 7 has essentially remained the same as estimated in both the original economic impact statement and the one prepared for a later amendment of the rules.

No additional costs have incurred as a result of these rules and costs imposed have decreased from the substantial costs originally needed to get the program implemented. As of April 5, 2016, there are 2,264 commercial driver license (CDL) holders with an HME and 14,900 CDL holders with dual endorsement of tank and HME. As of June 2, 2016, there are 19,794 valid (excluded were any credentials that were cancelled, suspended, revoked, expired, marked for deletion, disqualified, and those that indicate the credential holder is deceased) CDL holders who have successfully completed the required TSA HME Security Threat Assessment. There are 188 applicants who did not successfully complete the required TSA HME Security Threat Assessment. There has also been one case in which an active HME was immediately revoked as a result of a TSA HME Security Threat Assessment determination.

The Department conducts CDL transactions at 13 locations; some are only staffed a couple of days a month. The Department now directs people to TSA at <https://universalenroll.dhs.gov/hme-home> or toll free at 855-347-8371 to arrange their HME Security Threat Assessment. TSA charges a fee of \$86.50 for the HME Security Threat Assessment. The fees the Department charges have not changed since 2007 except the fee for a duplicate credential is now \$12 and if an applicant wants a Voluntary Travel ID CDL the fee is \$25 for the credential.

9. Any analysis submitted to the agency by another person that compares the rule's impact on this state's business competitiveness to the impact on businesses in other states.

No analysis regarding any of the rules in Article 7 was submitted by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states.

10. If applicable, that the agency completed the course of action indicated in the agency's previous five-year review.

The Department did not complete the course of action indicated in the previous five-year review report for the following rules because the indicated amendments were noncritical and did not have an impact on the enforceability of the rules. The indicated amendments (to incorporate by reference the most current edition of

the TSA, Department of Homeland Security Regulations, to spell out the acronym STA – Security Threat Assessment, to correct punctuation and language, and to change the word Division to Department) were intended only to improve rule clarity, conciseness, and understandability, and at that time did not rise to the level of importance necessary for the Department to seek special permission from the Governor’s Office to proceed with the rulemaking while under the rulemaking moratorium.

R17-4-701. Definitions

R17-4-702. Scope

R17-4-703. General Provisions

R17-4-707. 60-Day Notice to Apply

R17-4-709. Determination of Security Threat

R17-4-710. Requests for Administrative Hearing

R17-4-711. HME on CDL Learner’s Permit

R17-4-712. Transfer Applicants

The Department indicated no course of action in the previous five-year review report for the following rules:

R17-4-704. Requirements for an HME

R17-4-705. Required Testing

R17-4-706. Fees

R17-4-708. Security Threat Assessment

The Department submitted a request to proceed with rule amendments under the rulemaking moratorium of the previous Governor’s administration, but received no response. The Department then submitted a request under the current Governor and on September 18, 2015, the Department received permission from the Governor’s office to proceed with rulemaking that will accomplish all of the anticipated amendments. The Department currently has a team working on this rulemaking and intends to submit final rules to the Council by December 30, 2016.

11. A determination that the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

In rulemaking, the Department routinely adopts the least costly and burdensome options for any process or procedure required of the regulated public or industry. However, each state is prohibited under Public Law 107-56 “USA PATRIOT Act” from issuing a license to operate a motor vehicle transporting a hazardous material unless the Secretary of Transportation has first determined that the individual is not a security risk. 49 CFR Part 1572 - Credentialing and Security Threat Assessments provides the federal requirements to carry out the program for endorsing credentials for hazardous material haulers. 49 U.S.C. 31102 requires a state to submit a plan agreeing to enforcement of the regulations relating to hazardous materials transportation safety, among

other things, in order to qualify for grants relating to motor carrier and motor carrier safety. Therefore, to the extent permitted by federal law, the Department has determined that the following rules impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs necessary to achieve the underlying regulatory objectives. The fee charged for the assessment is determined by TSA.

12. A determination that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

The intent of the rules in Article 7 is to be consistent with federal regulations and incorporates by reference the corresponding federal laws and does not enact any requirement that is more stringent.

13. If applicable, for rules adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The whole Article was adopted prior to July 29, 2010.

14. Proposed Action.

The Department proposes no immediate action for R17-4-704 or R17-4-708 since these rules meet their objectives and are effective, consistent with statute, enforceable, clear, concise, and understandable.

Arizona Department of Transportation

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Section B

Analysis of Individual Rules

Arizona Department of Transportation
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17 A.A.C. Chapter 4, Article 7, Hazardous Materials Endorsement

Analysis of Individual Rules

R17-4-701. Definitions

2. Objective

This rule provides industry representatives and the public with a better understanding of terms specific to the rules contained in this Article.

6. Clarity, Conciseness, and Understandability

While this rule is generally clear, concise, and understandable, the reference to 49 CFR 1572.3 is inaccurate since that rule has since been revised and no longer contains all the terms. The reference needs to be changed to just 49 CFR 1572 to encompass the whole part and the terms used throughout the part. In addition, a formatting change is needed to remove the numbers in front of the definitions to be consistent with the Office of Secretary of State's rulemaking requirements.

14. Proposed Action

The Department proposes to amend the rule to correct and update the federal citation as identified in item 6 and to remove the numbers in order to be consistent with formatting. The Department currently has a team working on a rulemaking package and intends to submit final rules to the Council by December 30, 2016.

R17-4-702. Scope

2. Objective

This rule incorporates by reference, and makes applicable to all commercial drivers who are applying for an HME, the federal regulations pertaining to the TSA's Security Threat Assessment of drivers who are transporting hazardous materials as the Department deems reasonable and proper in governing safety operations and as required under A.R.S. § 28-3103.

3. Effectiveness of the rules in achieving objectives

This rule would be more effective if the federal reference was updated to a current edition. Since the incorporation by reference of the 2004 edition of 49 CFR 1572, there has been the addition of the Transportation Worker Identification Credential (TWIC), clarification regarding the fees, and the addition of the allowance of a commercial motor vehicle driver licensed in Canada or Mexico who holds a Free and Secure Trade program card may use that card as an acceptable credential to transport placarded amounts of hazardous materials or any quantity of a material listed as a select agent or toxin in 42 CFR part 73 within the United States. In addition, corrections were made for organizational changes to the current standards. TWIC is a biometric credential for credentialed merchant mariners and workers with unescorted access to secure areas of vessels and facilities who must undergo a Security Threat Assessment.

4. Consistent with state and federal statutes and other rules made by the Department

In addition, to updating the federal reference, this rule needs to be amended so that the wording and format is more consistent with other Department rules that incorporate by reference and with the rulemaking requirements of the Office of the Secretary of State, which includes adding the address of the U.S. Government Publishing Office.

6. Clarity, Conciseness, and Understandability

While the rule is generally clear, concise, and understandable, the amendments needed to make the rule more consistent would also help for better clarity of the edition date and where the incorporated material can be ordered.

14. Proposed Action

The Department proposes to amend the rule to incorporate by reference the most current edition of 49 CFR 1572 and revise the wording to be more consistent and clear. The Department currently has a team working on a rulemaking package and intends to submit final rules to the Council by December 30, 2016.

R17-4-704. Requirements for an HME

2. Objective

This rule identifies the specific requirements the applicant must meet in order to be eligible to receive an HME in order to provide clarity and expectations of applicants.

R17-4-705. Required Testing

2. Objective

This rule further details the required testing of the applicable HME applicant. This is to help distinguish which testing is required based on the type of applicant.

6. Clarity, Conciseness, and Understandability

While this rule is generally clear, concise, and understandable, the following minor technical changes need to be made to make the rule more clear and concise: remove “with an existing HME” after “transfer applicant” since that is already in the definition of a transfer applicant and add the word “any” before “applicable fee.”

14. Proposed Action

The Department proposes to amend the rule as identified in item 6. The Department currently has a team working on a rulemaking package and intends to submit final rules to the Council by December 30, 2016.

R17-4-706. Fees

2. Objective

This rule identifies the applicable fees for an applicant. This rule clarifies to the applicants which types of fees will be required when applying for an HME.

6. Clarity, Conciseness, and Understandability

While this rule is generally clear, concise, and understandable, the beginning of the sentence would be more clear and understandable if it was revised to state, “All applicants and transfer applicants shall pay all applicable fees as prescribed by.”

14. Proposed Action

The Department proposes to amend the rule as identified in item 6. The Department currently has a team working on a rulemaking package and intends to submit final rules to the Council by December 30, 2016.

R17-4-707. 60-Day Notice to Apply

2. Objective

This rule identifies the timeframe for the Department to provide notification of the expiration of the Security Threat Assessment. The rule also requires the Department to cancel the driver license privileges of an applicant who fails to reapply for a Security Threat Assessment and fails to have the HME removed. This rule is in keeping with the requirements under 49 CFR 1572.13 and helps the stakeholders to understand the consequences of failing to comply.

6. Clarity, Conciseness, and Understandability

While this rule is generally clear, concise, and understandable, the following changes would help the rule to be more clear and concise: replace the term “Division” with “Department” to reflect organizational changes made within the Department and change “Driver License” into lowercase.

14. Proposed Action

The Department proposes to amend the rule to as identified in item 6. The Department currently has a team working on a rulemaking package and intends to submit final rules to the Council by December 30, 2016.

R17-4-708. Security Threat Assessment

2. Objective

This rule prescribes the validity period of a Security Threat Assessment and the instances when a new one is required following certain corrective actions. This rule helps stakeholders by clarifying the actions that will require a new Security Threat Assessment and HME regardless of the 5-year validity period.

R17-4-709. Determination of Security Threat

2. Objective

This rule describes the actions the Department takes when an applicant fails the Security Threat Assessment to help applicants better understand the process of what is required.

6. Clarity, Conciseness, and Understandability

While this rule is generally clear, concise, and understandable, the following changes would help the rule to be more clear and concise: replace the term “Division” with “Department” to reflect organizational changes made

within the Department, remove the word “designated” from subsection (2)(c) since the applicant may visit any CDL office, and change “Driver License” into lowercase.

14. Proposed Action

The Department proposes to amend the rule as identified in item 6. The Department currently has a team working on a rulemaking package and intends to submit final rules to the Council by December 30, 2016.

R17-4-710. Requests for Administrative Hearing

2. Objective

This rule prescribes the entity to which and the reasons an applicant may request an appeal or administrative hearing to clarify which actions can be readdressed and to whom the applicants need to contact.

6. Clarity, Conciseness, and Understandability

While this rule is generally clear, concise, and understandable, the following changes would help the rule to be more clear and concise: replace the term “Division” with “Department” to reflect organizational changes made within the Department and change “driving privileges” in subsection (B) into “driver license privileges” so that it will be more accurate, understandable, and consistent.

14. Proposed Action

The Department proposes to amend the rule as identified in item 6. The Department currently has a team working on a rulemaking package and intends to submit final rules to the Council by December 30, 2016.

R17-4-712. Transfer Applicants

2. Objective

This rule provides the requirements to transfer an HME from another state and clarifies the process for the transfer applicants.

6. Clarity, Conciseness, and Understandability

Since the adoption of this rule in 2007, the program has become more efficient, verification of the TSA approval occurs at time of issuance, and all transfer applicants will have existing TSA approval. The following amendments are needed to make the rule more clear and concise and accurate to the current process: remove subsections (C) and (D) since they are unnecessary, change and reformat subsection (B) to accurately depict the current process of verifying the TSA approval before issuing the CDL with an HME, and spell out the acronym STA (Security Threat Assessment).

14. Proposed Action

The Department proposes to amend the rule to as identified in item 6. The Department currently has a team working on a rulemaking package and intends to submit final rules to the Council by December 30, 2016.

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Rule Text

ARTICLE 7. HAZARDOUS MATERIALS ENDORSEMENT

R17-4-701. Definitions

In addition to the definitions contained in 49 CFR 1572.3, the following words and phrases apply to this Article:

1. "Applicant" means an individual who applies to obtain an original or renewal HME.
2. "CDL" means Commercial Driver License.
3. "HME" means Hazardous Materials Endorsement.
4. "Transfer applicant" means an individual with an existing HME issued by another state, applying to the state of Arizona for an HME.
5. "TSA" means the U.S. Transportation Security Administration.
6. "Security Threat Assessment" means a check by TSA that includes a fingerprint-based criminal history records check, an intelligence-related background check, and final disposition.

Historical Note

Adopted effective February 1, 1994 (Supp. 94-1). Section recodified to R17-4-309 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Amended by final rulemaking at 13 A.A.R. 3368, effective November 10, 2007 (Supp. 07-3).

R17-4-702. Scope

This Article applies to commercial drivers who are applying for an original HME or to renew or transfer an existing HME, in accordance with 49 CFR Part 1572 (November 24, 2004) incorporated by reference, on file with the Arizona Department of Transportation and available from the U.S. Government Printing Office's web page at www.gpo.gov. This incorporation by reference contains no future additions or amendments.

Historical Note

Adopted effective November 15, 1989 (Supp. 89-4). Amended effective October 11, 1995 (Supp. 95-4). Section recodified to R17-1-202 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Amended by final rulemaking at 13 A.A.R. 3368, effective November 10, 2007 (Supp. 07-3).

R17-4-704. Requirements for an HME

To receive an HME an applicant shall:

1. Possess a valid Arizona CDL,
2. Be at least 21 years of age,
3. Successfully complete all required testing under R17-4-705,
4. Pay all applicable fees under R17-4-706,
5. Make application to TSA for a Security Threat Assessment, and
6. Receive a Determination of No Security Threat from TSA.

Historical Note

Adopted effective October 6, 1983 (Supp. 83-5). Former Section R17-4-49 renumbered without change as Section R17-4-704 (Supp. 87-2). Amended by final rulemaking at 7 A.A.R. 3834, effective August 10, 2001 (Supp. 01-3). Section recodified to R17-4-512 at 7 A.A.R. 4157, effective September 7, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1).

R17-4-705. Required Testing

- A. Original and renewal applicants shall successfully complete the testing requirements under A.R.S. § 28-3223.
- B. A transfer applicant with an existing HME shall be required to comply with HME knowledge test requirements under A.R.S. § 28-3223, and pay applicable fee under R17-4-706.

Historical Note

Adopted effective August 2, 1978 (Supp. 78-4). Former Section R17-4-61 renumbered without change as Section R17-4-705 (Supp. 87-2). Section recodified to R17-4-510 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Amended by final rulemaking at 13 A.A.R. 3368, effective November 10, 2007 (Supp. 07-3).

R17-4-706. Fees

All applicable fees shall be paid as prescribed by:

1. TSA for a Security Threat Assessment, and
2. A.R.S. § 28-3002.

Historical Note

Former Rule, General Order 96. Former Section R17-4-39 renumbered without change as Section R17-4-706 (Supp. 87-2). Section recodified to R17-4-407 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1).

R17-4-707. 60-Day Notice to Apply

- A. The Division shall notify an existing HME holder 60 days prior to expiration of a Security Threat Assessment that a new Security Threat Assessment shall be successfully passed to retain the HME.
- B. Upon expiration of the Division's 60 Day Notice to Apply, the Division shall cancel the Arizona Driver License privileges of an applicant who fails to apply for a Security Threat Assessment and fails to remove the HME.

Historical Note

Adopted as an emergency effective April 24, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-2). Emergency expired. Former Section R17-4-66 renumbered and reserved as R17-4-707 (Supp. 87-2). New Section R17-4-66 adopted and renumbered as Section R17-4-707 effective August 11, 1987 (Supp. 87-3). Amended by final rulemaking at 6 A.A.R. 4668, November 14, 2000 (Supp. 00-4). Section recodified to R17-1-203 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1).

R17-4-708. Security Threat Assessment

- A. An applicant for an HME shall successfully pass a Security Threat Assessment every five years.
- B. An applicant subject to any of the following actions, as defined under A.R.S. § 28-3001, shall obtain a new Security Threat Assessment and HME:
 - 1. Cancellation,
 - 2. Suspension for a period of one year or more,
 - 3. Expiration for a period of one year or more, and
 - 4. Revocation for a period of one year or more.

Historical Note

Adopted effective January 13, 1993 (Supp. 93-1). Section recodified to R17-4-310 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1).

R17-4-709. Determination of Security Threat

Upon notification by TSA that an applicant has failed to successfully pass the Security Threat Assessment:

- 1. For an original applicant:
 - a. The Division will deny the request for an HME; and
 - b. If otherwise qualified, the applicant may apply for a CDL without an HME.
- 2. For a renewal applicant:
 - a. The Division shall immediately cancel the HME.
 - b. The Division will notify an HME applicant with a Notice of Action that the applicant has 15 days from the notice date to have the HME removed.
 - c. The applicant shall visit a designated CDL office for removal of the HME.
 - d. If the applicant fails to comply with the Division's Notice of Action, the Division shall cancel the applicant's Arizona Driver License privilege.
 - e. Upon removal of an HME by the Division under this Section, an applicant, if otherwise qualified, may continue to hold a CDL.

Historical Note

Adopted by an emergency action effective December 1, 1998, pursuant to A.R.S. § 41-1026, effective for a maximum of 180 days (Supp. 98-4). Emergency expired May 29, 1999; Section renewed and amended by emergency rulemaking, pursuant to A.R.S. § 41-1026, at 5 A.A.R. 2433, effective July 7, 1999 for a maximum of 180 days (Supp. 99-3). Emergency Section expired January 3, 2000, pursuant to A.R.S. § 1026(C); new Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Section recodified to R17-5-601 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1).

R17-4-710. Requests for Administrative Hearing

- A. The Division shall not accept a request for hearing for failure to qualify for an HME. In the event an applicant has failed to successfully complete the Security Threat Assessment, the applicant shall make appeal directly through TSA.
- B. An applicant whose Arizona driving privileges have been canceled under R17-4-707 or R17-4-709 may request an administrative hearing under 17 A.A.C. 1, Article 5.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2928, effective August 5, 1999 (Supp. 99-3). Section recodified to R17-1-101 at 7 A.A.R. 919, effective January 24, 2001 (Supp. 01-1). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1).

R17-4-712. Transfer Applicant

- A. Applicability. A transfer applicant shall comply with the provisions of this Article except otherwise required by this Section.
- B. Existing TSA approval.
 - 1. Upon application by a transfer applicant who has an existing HME and who has successfully passed a STA prior to application in Arizona, the Division shall:
 - a. Issue a five-year Arizona CDL with an HME;
 - b. Validate the CDL with an HME upon verification of TSA approval, and the transfer applicant shall not be required to return to a designated CDL office unless otherwise required; and
 - c. Consider an applicant who has been subject to any action under R17-4-708(B) an original applicant and shall require applicant to undergo a new STA and testing requirements under R17-4-705.
 - 2. The Division shall not require that a transfer applicant who has received STA approval undergo an additional STA prior to expiration of existing TSA approval, unless required under federal or state law or these rules,
 - 3. If the Division is unsuccessful in verifying successful completion of STA, the Division shall immediately cancel the HME, and require that the applicant return to designated CDL office to have HME removed from license.
 - 4. The Division shall mail to the transfer applicant a Notice of Action that the applicant has 15 days from the notice date to visit a designated CDL office to have the HME removed.
- C. No existing TSA approval.
 - 1. Upon application by a transfer applicant with an existing HME, who has not undergone a STA prior to application in Arizona, the Division shall:
 - a. Require that the transfer applicant successfully undergo a STA; and
 - b. Upon verification of successful completion of STA, issue an Arizona CDL with an HME.
 - 2. If a transfer applicant fails to successfully complete a STA or the Division is unsuccessful in verifying successful completion of STA, the Division shall deny the application for HME.

3. If the applicant fails to comply with the Division's Notice of Action, the Division shall cancel the applicant's Arizona Driver License privilege.
- D.** CDL eligibility. The Division may grant an application for a CDL, if an applicant is otherwise qualified to hold CDL.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 3368, effective November 10, 2007 (Supp. 07-3).

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Statutory Authority

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Statutory Authority

General Authority for Rulemaking

A.R.S. § 28-366. Director; rules

The director shall adopt rules pursuant to title 41, chapter 6 as the director deems necessary for:

1. Collection of taxes and license fees.
2. Public safety and convenience.
3. Enforcement of the provisions of the laws the director administers or enforces.
4. The use of state highways and routes to prevent the abuse and unauthorized use of state highways and routes.

Specific Authority for Rulemaking

A.R.S. § 28-3103. Driver license endorsements

A. A driver license applicant shall obtain the following endorsements to the applicant's driver license and shall submit to an examination appropriate to the type of endorsement if the applicant operates one or more of the following vehicles:

1. A motorcycle endorsement for operation of a motorcycle if the applicant qualifies for a class M license and if the applicant qualifies for or has a class A, B, C, D or G license.
2. A hazardous materials endorsement on a class A, B or C license for operation of a vehicle that transports hazardous materials, wastes or substances in a quantity and under circumstances that require the placarding or marking of the transport vehicle as required by the department's safety rules prescribed pursuant to chapter 14 of this title. The department or an outside source authorized by the department and approved by the transportation security administration may:
 - (a) Conduct background checks in accordance with the transportation security administration procedures.
 - (b) Require that all hazardous materials endorsement applicants submit fingerprints.
3. A double-triple trailer endorsement on a class A license for operation of a vehicle towing double or triple trailers.
4. A passenger vehicle endorsement on a class A, B or C license for operation of a bus designed to transport sixteen or more passengers, including the driver, or a school bus.
5. A tank vehicle endorsement on a class A, B or C license for operation of a tank vehicle. For the purposes of this paragraph, "tank vehicle" means a commercial motor vehicle that is designed to transport a liquid or gaseous material within a tank that is either permanently or temporarily attached to the vehicle or chassis, including a cargo tank and a portable tank and excluding a portable tank having a rated capacity under one thousand gallons.

6. A school bus endorsement on a class A, B or C license for operation of a school bus. Applicants shall successfully complete both a written knowledge test and a driving skills test to obtain a school bus endorsement.
- B.** When applying for a commercial driver license endorsement pursuant to article 5 of this chapter, the applicant shall successfully complete the skills portion of the examination in a motor vehicle or vehicle combination applicable to the endorsement.
- C.** On notification by the transportation security administration that an individual's authorization to hold a hazardous materials endorsement has been terminated, the department shall immediately cancel the hazardous materials endorsement on the driver's commercial driver license.

A.R.S. § 28-5204. Administration and enforcement; rules

- A.** In the administration and enforcement of this chapter, the department of transportation shall adopt:
 1. Reasonable rules it deems proper governing the safety operations of motor carriers, including rules governing safety operations of motor carriers, shippers and vehicles transporting hazardous materials, hazardous substances or hazardous wastes and shall prescribe necessary forms. In determining reasonable rules, the department of transportation shall consider:
 - (a) The nature of the operations and regulation of public service corporations as defined in article XV, sections 2 and 10, Constitution of Arizona.
 - (b) Rules adopted by the director of environmental quality pursuant to section 49-855.
 2. Rules necessary to enforce and administer this chapter, including rules setting forth reasonable procedures to be followed in the enforcement of this chapter and rules adopting transporter safety standards for hazardous materials, hazardous substances and hazardous waste. In adopting the rules, the department shall consider, as evidence of generally accepted safety standards, the publications of the United States department of transportation and the environmental protection agency.
- B.** Rules adopted by the department of transportation also apply to a manufacturer, shipper, motor carrier and driver.
- C.** The department of public safety shall and a political subdivision may enforce this chapter and any rule adopted pursuant to this chapter by the department of transportation. A person acting for a political subdivision in enforcing this chapter is required to be certified by the department of public safety as qualified for the enforcement activities.
- D.** The department may audit records and inspect vehicles that are subject to this chapter.

ARIZONA DEPARTMENT OF HEALTH SERVICES (F-16-1005)

Title 9, Chapter 16, Article 1, Licensing of Midwifery



**GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT**

MEETING DATE: October 4, 2016

AGENDA ITEM: F-6

TO: Members of the Governor's Regulatory Review Council ("Council")

FROM: Chris Kleminich, Staff Attorney

DATE: September 16, 2016

SUBJECT: ARIZONA DEPARTMENT OF HEALTH SERVICES (F-16-1005)
Title 9, Chapter 16, Article 1, Licensing of Midwifery

This five-year-review report from the Arizona Department of Health Services (Department) covers 18 rules in A.A.C. Title 9, Chapter 16, Article 1, related to the licensing of midwifery.

All of the rules became effective on July 1, 2013. The rules address definitions; applications for initial licensure; license renewal; administration; continuing education; name changes and duplicate licenses; time-frames; responsibilities of a midwife and scope of practice; informed consent for midwifery services; assertions to decline required tests; prohibited practice and transfer of care; required consultation; emergency measures; midwife reports after termination of midwifery services; client and newborn records; denial, suspension, or revocation of licenses; and the Midwifery Advisory Committee.

Proposed Action

The Department indicates that it is reviewing midwifery services outcomes, as reported by licensed midwives, to ensure that the 2013 amendments related to midwifery services and scope of practice do not increase negative health and safety outcomes for a mother or the mother's child. The Department indicates that it does not plan to start the rulemaking process to amend the rules until July 2019 because it believes that information on midwifery services outcomes will not be statistically significant until five years' worth of data has been gathered. The Department anticipates submitting a rulemaking to the Council to address issues identified in this report by July 2021.

Substantive or Procedural Concerns

As of the writing of this memorandum, it is staff's understanding that there is active litigation between the Department and the Arizona Association of Midwives (Association) related to Sections 108, 113, and 114. In any instance where rules in a five-year-review report

are involved in a pending court challenge, staff strongly recommends, out of deference to the judicial process, that the Council avoid taking any actions related to those rules.

Analysis of the agency's report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:

1. Has the agency certified that it is in compliance with A.R.S. § 41-1091?

Yes. The Department has certified its compliance with A.R.S. § 41-1091.

2. Has the agency analyzed the rules' effectiveness in achieving their objectives?

Yes. The Department indicates that Sections 101, 102, 105, 108, 109, 110, 111, and 116 will be more effective when issues related to clarity, conciseness, and understandability are addressed.

Section 107 could be more effective if the initial license application process was more fully described.

Section 111 cannot be determined to be effective in achieving its objective, according to the Department, until data on five years of midwifery services outcomes are available.

Section 116 could be more effective if the Department clarified the phrase "deny, suspend, or revoke a license permanently or for a definite period of time."

3. Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?

Yes. In the report, the Department provides summaries of written comments and criticisms along with its responses. Copies of those written comments and criticisms have been included as an attachment to this memorandum.

4. Has the agency analyzed whether the rules are authorized by statute?

Yes. The Department cites to both general and specific authority for the rules. As general authority, the Department cites to A.R.S. § 36-136(F), under which the Department "may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health."

As specific authority, the Department cites to A.R.S. § 36-752, related to the licensure of midwives, and A.R.S. § 36-755, under which the Department may adopt rules that are necessary for the licensing and regulation of midwifery.

5. Has the agency analyzed the rules' consistency with statutes and other rules?

Yes. The Department indicates that the rules are consistent with statutes and other rules.

6. **Has the agency analyzed the current enforcement status of the rules?**

Yes. The Department indicates that the rules are enforced as written.

7. **Has the agency analyzed whether the rules are clear, concise, and understandable?**

Yes. The Department indicates that the following rules could be made more clear, concise, and understandable:

- Section 101: Definitions should fully be in alphabetical order. The definition of "addiction" should be repealed because it is not used in the Article. The term "client" should be defined. In addition, the following terms are only used once in the Article and may be moved to, and defined in, the rule where the term is used: "abnormal presentation," "aseptic," "current photograph," "infant," "intrapartum," "local registrar," "para," "parity," "prenatal care," "primigravida," "primipara," "serious mental illness," and "substance abuse."
- Section 102: Because the terms "licensure" and "licensing" are both used in the rule, it is unclear if the terms have the same meaning or not.
- Section 105: The terms "continuing education unit" and "health professional organization" should be defined.
- Section 108: Ambiguous or undefined terms are used throughout the rule.
- Sections 109 and 110: The term "client file" is ambiguous because Section 115 establishes requirements for "client records."
- Section 111: The terms "baby," "evidence," and "excessive" should be clarified.
- Section 116: Adding the phrase "required by A.R.S. Title 36, Chapter 6, Article 7.1 or these rules" to the "falsification of records" language would make the requirement clearer.

8. **Stringency of the Rules:**

a. **Are the rules more stringent than corresponding federal law?**

No. No federal laws directly correspond to the rules.

b. **If so, is there statutory authority to exceed the requirements of federal law?**

Not applicable.

9. **For rules adopted after July 29, 2010:**

a. **Do the rules require issuance of a regulatory permit, license or agency authorization?**

Yes. The rules establish midwifery licensing requirements.

b. If so, are the general permit requirements of A.R.S. § 41-1037 met or does an exception apply?

A general permit is not issued, as the Department indicates that the issuance of an alternative type of permit, license or authorization is specifically authorized by state statute, in compliance with A.R.S. § 41-1037(A)(2).

10. Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?

Yes. The Department indicates that the proposed course of action was fulfilled when it completed an exempt rulemaking that became effective on July 1, 2013.

Conclusion

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. This analyst recommends that the report be approved.



GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M

MEETING DATE: October 4, 2016

AGENDA ITEM: F-6

TO: Members of the Governor's Regulatory Review Council ("Council")

FROM: GRRRC Economic Team

DATE: September 16, 2016

SUBJECT: **ARIZONA DEPARTMENT OF HEALTH SERVICES (F-16-1005)**
Title 9, Chapter 16, Article 1, Licensing of Midwifery

I have reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

1. **Economic Impact Comparison**

No economic, small business, and consumer impact statement (EIS) from the most recent Department rulemaking completed in 2013 was available for Article 1, as the Department used the exempt rulemaking process.

The rules reviewed address the procedures involved in the licensing of midwifery. Midwives provide health care related to pregnancy, labor, delivery, and postpartum care of mothers and infants. There are four classifications of midwives in Arizona: certified nurse-midwives (CNM), certified midwives (CM), certified professional midwives (CPM), and direct-entry midwives (DM). CNMs and CMs are credentials that require graduate education, and their licensing falls under the jurisdiction of the Board of Nursing. CPMs and DMs do not necessarily have formal education, and their licensing falls under the jurisdiction of the Department. Key stakeholders that are impacted are the Department, CPMs, DMs, and consumers of midwifery services provided by CPMs or DMs. The Department notes that as of July 1, 2016, a total of 78 midwives are licensed by the Department. 54 are CPMs, and 24 are DMs.

The Department provides estimated costs incurred for the licensing of midwives in Calendar Year 2015:

- Initial midwifery license - \$10 per license x 4 licenses issued = \$40
- Renewal of midwifery license - \$30 per license x 22 licenses = \$660
- Late report submissions - \$20 per report x 73 reports = \$1,460
- Complaint investigations - approximately \$3,600-\$5,400 total
- Hearings preparations - approximately \$10,000 total

Prior to 2013, initial midwifery licenses incurred costs to the individual applicant of \$850-\$1,050 as follows:

- \$25 application fee paid to the Department
- \$100 testing fee paid to the Department
- \$25 licensing fee paid to the Department
- \$700-\$900 testing fee paid to the North American Registry of Midwives (NARM)

After 2013, initial midwifery licenses incurred costs to the individual applicant of \$2,115-\$2,265 as follows:

- \$25 application fee paid to the Department
- \$100 testing fee paid to the Department
- \$25 licensing fee paid to the Department
- \$950-\$1,100 application fee paid to NARM
- \$900 examination fee paid to NARM
- \$115 examination fee paid to the testing firm utilized by NARM

These cost increases are outside of the Department's control, as the fee schedule has remained constant.

2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?

The Department determines that the rules impose the least burden and costs to those regulated by the rules in order to achieve the underlying regulatory objective.

3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?

No analysis was submitted to the Department by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

4. Conclusion

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.



ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

August 22, 2016

Nicole A. Ong, Chairperson
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 402
Phoenix, AZ 85007

RE: Report for A.A.C. Title 9, Chapter 16, Article 1, Licensing of Midwifery

Dear Ms. Ong:

According to the five-year-review report schedule of the Governor's Regulatory Review Council (Council), a report for A.A.C. Title 9, Chapter 16, Article 1 was due to the Council no later than April 29, 2016. The Department of Health Services (Department) requested an extension which the Council granted and the report is now due to the Council no later than August 26, 2016. The Department has reviewed A.A.C. Title 9, Chapter 16, Article 1, and is enclosing a report to the Council for these rules.

The Department believes that this report complies with the requirements of A.R.S. § 41-1056. A five-year-review summary, information that is identical for all the rules, information for individual rules, copies of the rules reviewed, copies of general and specific statutes, a copy of the Annual Report from the Licensed Midwife Advisory Committee, July 2014-June 2015, and copies of written criticisms received are included in the package. The Department intends to take the action described in the report.

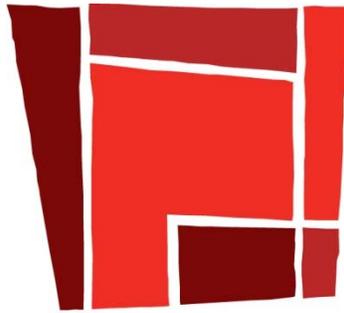
The Department certifies that the Department is in compliance with A.R.S. § 41-1091.

If you need any further information, please contact me at (602) 542-1020.

Sincerely,

Robert Lane
Director's Designee

RL:vkg
Enclosures



ARIZONA DEPARTMENT OF HEALTH SERVICES

FIVE-YEAR-REVIEW-REPORT

TITLE 9. HEALTH SERVICES

CHAPTER 16. DEPARTMENT OF HEALTH SERVICES

OCCUPATIONAL LICENSING

ARTICLE 1. LICENSING OF MIDWIFERY

August 2016

FIVE-YEAR-REVIEW REPORT

TITLE 9. HEALTH SERVICES

CHAPTER 16. DEPARTMENT OF HEALTH SERVICES – OCCUPATIONAL LICENSING

ARTICLE 1. LICENSING OF MIDWIFERY

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FIVE-YEAR-REVIEW SUMMARY
OCCUPATIONAL LICENSING
ARTICLE 1. LICENSING OF MIDWIFERY

Arizona Revised Statutes (A.R.S.) § 36-132(A)(1) requires the Arizona Department of Health Services (Department) to protect the health of the people of the state of Arizona. A.R.S. § 36-136(F) requires the Department to promulgate rules necessary for the proper administration and enforcement of the laws relating to the public health.

A.R.S. Title 36, Chapter 6, Article 7 contains the statutes for the licensing of midwives. A.R.S. § 36-751(3) defines a midwife as "a person who delivers a baby or provides health care related to pregnancy, labor, delivery, and postpartum care of the mother and her infant." A.R.S. § 36-752(A) prohibits, in most cases, an individual from performing the duties of a midwife without being licensed by the Department. A.R.S. § 36-754(A) requires the Department to issue a license to qualified individuals who pay applicable fees. A.R.S. § 36-755 allows the Director to adopt rules necessary for the proper administration and enforcement of the A.R.S. Title 36, Chapter 6, Article 7 and requires the Director to, by rule, adopt standards with respect to the practice of midwifery designed to safeguard the health and safety of the mother and infant.

When the Department promulgates licensing rules required in law for various individuals, agencies, or facilities, hereinafter referred to as entity or entities, the Department works with affected stakeholders to establish, consistent with the specific statutory authority, requirements that protect the health and safety of an individual receiving services from the licensed entity and the public. In addition to information provided by affected stakeholders, the Department considers evolving industry standards, economic burden, statistical information, historical data, and rulemaking standards and requirements when promulgating health and safety licensing rules.

Once established, licensing rules become the minimum standard for a licensed entity if the entity wants to continue to operate and provide services. Other governmental agencies establish minimum licensing standards in rule for providing services based on what is necessary to protect health and safety. An entity licensed by the Department or another governmental agency is required to comply with the requirements established in rule if the licensed entity wants to continue to operate and provide services that are reserved for licensed entities.

An entity cannot provide services at a level lower than the established minimum to a member of the public based on the member's request. For example: if a parent who enrolls the parent's infant in a licensed child care facility states that the ratio of one caregiver to five infants is not necessary for the parent's infant because the infant sleeps most of the time and requests that the infant be placed in a setting

of one to six or one to seven, the licensed child care facility is not allowed to place the infant in a setting of one to six or one to seven; if a resident in a licensed nursing care institution or the resident's family requests that the resident not be served the minimum required amounts of food or have a room that does not have the minimum required square footage, the licensed nursing care institution is still required to serve at least the minimum required amounts of food and provide a room that has at least the minimum required square footage; and if an individual requests that a licensed hearing aid dispenser diagnosis the underlying cause of the individual's hearing loss, the licensed hearing aid is not allowed to provide a diagnosis to the individual.

When an individual receives a license from a governmental agency to provide services, there is a scope of practice that governs the type and the level of services the licensed individual is authorized to provide. For example, a licensed practical nurse (LPN) has a limited scope and is required to be under the supervision of a registered nurse (RN). The RN can provide nursing services independently but usually provides nursing services under the direction of a physician or registered nurse practitioner (NP). The NP can provide nursing services and certain medical services independently and be authorized by the governmental agency, based on the NP's education, skills, knowledge, and credentials at the time of licensing, to have an extended scope of practice. A LPN with 20 years of experience is not allowed to practice independently based on the LPN's experience. In order to operate independently, the LPN must obtain a license to practice as a RN by acquiring the required education, skills, knowledge, and credentials and complying with the RN licensing rules. Experience does not qualify a LPN to provide services as a RN or a RN to provide services as a NP. A licensed midwife is required to have specific education, skills, knowledge, and credentials in order to be authorized by the Department to provide midwifery services. Even though a licensed midwife obtains skills and knowledge about women's health, pregnancy, childbirth, and postpartum care through experience, the licensed midwife is not allowed to provide obstetrical or gynecological services that are not delineated as midwifery services or are prohibited by midwifery rules unless the licensed midwife demonstrates to the appropriate governing agency that the licensed midwife has the education, skills, knowledge, and credentials required by the governing agency to obtain a license that would allow an expanded scope of practice.

There are currently four types of midwives who provide midwifery services: certified nurse-midwives (CNM), certified midwives (CM), certified professional midwives (CPM), and direct-entry midwives (DM). Formal midwifery education programs that lead to the CNM and CM credential involve graduate education. Most programs require a bachelor's degree in nursing for entry, but some will accept a registered nurse (RN) without a bachelor's degree, providing a bridge program to a Bachelor of Science in Nursing (BSN) before the registered nurse begins the midwifery portion of the program. Certified

nurse-midwives and certified midwives are licensed and regulated, usually under a state's Board of Nursing, and are allowed to provide midwifery services in all 50 states.

In order to provide midwifery services in Arizona, independent midwives, those individuals who do not have a CNM or CM license, are required to obtain a midwifery license from the Department. Midwives licensed by the Department include CPMs and DMs. The CPM is the newest credential that was first issued in 1994 to independent midwives who provide out-of-hospital midwifery services. The credential is issued by the North American Registry of Midwives (NARM) to individuals who may or may not have formal education, but who provide verification of the required experience and skills and pass the NARM Skills Assessment. According to the Midwives Alliance-North America website, certified professional midwives are allowed to provide midwifery services in 28 states. The NARM website identifies 26 states that have some kind of legal recognition for CPMS. DMs include those individuals who obtained, through demonstrated experience, skills, and knowledge, and have continuously held, a midwifery license in this state since 1999.

Current rules in 9 A.A.C. 16, Article, 1, require an individual applying for an initial midwifery license to have obtained a CPM credential. Before the current rules were effective, an individual could submit to the Department verification of the individual's experience, knowledge, and skills, take and pass a knowledge test, practical test, and jurisprudence test (based on state laws for midwifery) and receive a midwifery license and would be considered a DM. A midwife currently licensed under A.R.S. Title 36, Chapter 6, Article 7 and rules in 9 Arizona Administrative Code (A.A.C.) 16, Article 1 is a CPM or DM depending on when the midwife obtained the midwifery license or if the midwife chose to become a CPM after the midwife obtained a midwifery license. Currently, of the 78 licensed midwives, there are 54 CPMs and 24 DMs.

A.A.C. Title 9, Chapter 16, Article 1 contains the rules for the licensing of midwifery. The rules in 9 A.A.C. 16, Article 1 were adopted effective July 1, 2013. Laws 2012, Chapter 93 required the Department to consider adopting rules regarding midwifery that would reduce the regulatory burden on licensed midwives, revise the midwifery scope of practice, and if available, adopt national licensure testing standards. In addition to the rulemaking authority in Laws 2012, Ch. 93, the Department is required by, A.R.S. § 36-755(B) to "adopt standards with respect to the practice of midwifery designed to safeguard the health and safety of the mother and child."

Laws 2012, Ch. 93 included exempt rulemaking authority until July 1, 2013 and provisions for reports to be submitted to the Department supporting an increase in a midwife's scope of practice. In addition, a midwifery scope of practice advisory committee to assist the Department in adopting and amending the rules related to midwifery scope of practice was established and was required to be comprised of two licensed midwives, two public members who have used midwifery services, one

physician licensed under A.R.S. Title 32, Chapter 13 experienced in obstetrics, one physician licensed under A.R.S. Title 32, Chapter 17 experienced in obstetrics, one physician licensed under A.R.S. Title 32, Chapter 13 or 17 who specializes in family medicine, and one nurse midwife or nurse practitioner.

Laws 2012, Ch. 93, also required the Department to provide public notice and an opportunity for public comments on recommendations from the midwifery scope of practice advisory committee and draft proposed rules on the Department's website. The Department posted draft midwifery licensing rules on the Department's website on December 12, 2012; January 8, 2013; February 10, 2013; March 9, 2013; May 8, 2013; and May 24, 2013 with an opportunity for the public to comment each time draft rules were posted. The Department held public meetings with the midwifery scope of practice advisory committee on November 27, 2012; December 17, 2012; January 14, 2013; February 11, 2013, April 3, 2013; May 5, 2013; and June 3, 2013 that provided opportunities for public comment. The Department's website at <http://azdhs.gov/director/administrative-counsel-rules/rules/index.php#rulemakings-completed-2013> for the completed midwifery licensing rulemaking contains documents related to the rulemaking including every draft posted, every meeting agenda, every comment received, and every report submitted to the Department supporting an increase in the midwifery scope of practice.

The midwifery licensing rules, effective July 1, 2013, established a midwifery advisory committee (MAC) which is required to examine aggregate data from midwife reports, notifications of client and client's newborn fatalities received by the Department, and evidence-based research pertaining to the practice of midwifery. Based on the review, the MAC is required to develop an annual report on midwifery and home births, including an analysis and summary of the above information and any recommendations for changes to the midwifery licensing rules.

In addition to the data from the midwife reports, recommendations for changes to rules, and a listing of evidence-based research, the MAC Report 2014-2015 included sections on complaints and enforcement actions and consumer voice. The report stated that written proposals for rule changes had been submitted to the MAC by the Arizona Association of Midwives and that the MAC had reviewed, and, in consensus, presented three of the proposals in the Report as recommendations to the Department.

RECOMMENDATION: Request that a rule be added that would allow a midwife to "continue care for a midwifery client with the current pregnancy as stated in subsection R9-16-111(B)(25) if all of the following criteria are met in the postpartum period: 1) the hemorrhage responds to treatments available in the out of hospital setting and is well controlled, (a) the client is alert and oriented, (b) the client's blood pressure remains within normal limits of between 90/60 and 140/90, *or* 2) the client has been discharged from physician care following a transfer of care for hemorrhage."

RECOMMENDATION: Request that the language in R9-16-111(B) be changed to read "(A) midwife shall not knowingly accept for midwifery services or continue midwifery services without documentation of condition treated and resolved, following which midwifery services may resume; for a client who has or develops any of the following..." The report states that the Department does not allow a midwife to resume care once the condition is treated by other health care professionals and resolved.

RECOMMENDATION: Request that the language in R9-16-111(B)(25) be changed to allow a midwife to continue care for a midwifery client with a postpartum hemorrhage if the hemorrhage responds to treatments available in the out-of-hospital setting and is well controlled as evidenced by the client being alert and the client's blood pressure remaining within normal limits of between 90/60 and 140/90 and the client has been discharged from physician care following a transfer of care for hemorrhage.

A.A.C. Title 9, Chapter 16, Article 1 rule sections include:

- R9-16-101 that contains definitions for the midwifery rules in 9 A.A.C. 16. Article 1.
- R9-16-102 that currently contains requirements for an individual applying for an initial application. References to documents verifying experience obtained during an apprenticeship were repealed during the last rulemaking.
- R9-16-103 that currently contains requirements for a midwife applying to renew the midwife's license. During the last rulemaking, the requirements for a midwife apprenticeship including documentation requirements and a preceptor rating guide were repealed. In addition, written and oral examination requirements were repealed.
- R9-16-104 that currently contains requirements for Department notifications and recordkeeping. The last rulemaking repealed references to examinations administered by the Department that were previously addressed in the Section.
- R9-16-105 that currently contains requirements for continuing education. The last rulemaking repealed renewal requirements including an exhibit that was the "Application for Biennial Renewal of Midwife License" form and the "Affidavit of Continuing Education" form
- R9-16-106 that currently contains requirements for changing a midwife's name on the midwife's midwifery license and for requesting a duplicate license.
- R9-16-107 that contains time-frames for the administrative completeness and substantive review of submitted midwifery applications.
- R9-16-108 that delineates the responsibilities and scope of practice for a licensed midwife.

- R9-16-109 that contains requirements for informed consent for midwifery services.
- R9-16-110 that contains provisions documenting when a client declines a required test.
- R9-16-111 that delineates prohibited practices and transfer of care requirements.
- R9-16-112 that delineates client conditions and conditions that a client's newborn may have that would require a midwife to obtain a consultation.
- R9-16-113 that contains requirements for emergency measures that a midwife may take including ensuring that an emergency medical services provider is called.
- R9-16-114 that contains requirements for a report for each client from the midwife after the midwife terminates the client's midwifery services.
- R9-16-115 that contains requirements for a client's record and the client's newborn's record.
- R9-16-116 that delineates circumstances under which the Department may deny, suspend or revoke a midwifery license.
- R9-16-117 that establishes requirements for the composition and functions of a midwifery advisory committee. Although the Department plans to solicit input from licensed midwives regarding the licensing process, and may ask the current committee to function in that role, the Department does not believe that there is specific statutory authority requiring the Department to establish a midwife advisory committee in rule.

The Department is not reviewing the Section and allowing the Section to expire.

The Department plans to complete the review of midwifery services outcomes information and the reports submitted by the MAC and start the rule amendment process by July, 2019. At that time the Department will amend the rules to address any changes determined to be necessary to the scope of practice for licensed midwives and the midwifery licensing rules as a result of the review and to address any issues identified in this report.

INFORMATION IDENTICAL FOR ALL THE RULES

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

General: A.R.S. §§ 36-132(A)(1) and 36-136(F).

Implementing (specific): A.R.S. §§ 36-752 and 36-755 (statutory authority for the entire article)

2. **The purpose of the rule**

The purpose of the rules is to specify requirements for obtaining a license and operating as a licensed midwife.

4. **Analysis of consistency with state and federal statutes and rules**

The rules are consistent with state statutes and rules and, to the extent that federal statutes and regulations are consistent with state statutes, with federal statutes and regulations.

5. **Status of enforcement of the rule**

The Department enforces the rules as written.

7. **Summary of the written criticisms of the rule received within the last five years**

Since the current rules became effective July 1, 2013, the Department has received nine written criticisms, eight from the Arizona Association of Midwives and one from a consumer of midwifery services. One criticism received from the Arizona Association of Midwives was a request for a review of an agency practice. The remainder of the criticisms received from the Arizona Association of Midwives are related to subsections in R9-16-111, Prohibited Practice; Transfer of Care and R9-16-101, Definitions, and although the criticism from the consumer did not contain a reference to a specific rule, it also is a criticism of R9-16-111. The criticisms are addressed in the analyses of R9-16-101 and R9-16-111.

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

For the purpose of this economic impact comparison, annual costs/revenues are designated as minimal when \$5,000 or less, moderate when between \$5,000 and \$50,000, and substantial when \$50,000 or greater in additional costs or revenues. A cost is listed as significant when meaningful or important, but not readily subject to quantification. The rules in 9 A.A.C. 16, Article 1, were adopted by exempt rulemaking, effective July 1, 2013 and there is not an economic, small business, and consumer impact statement available for a comparison. Unless otherwise stated, the numbers provided in the following analysis are for calendar year 2015.

There are, as of July 1, 2016, 78 midwives licensed by the Department. Of these 78 licensed midwives, 54 are recognized as CPMs by NARM.

A.R.S. § 36-758 provides the authority for the Department to establish in rule and collect nonrefundable fees that do not exceed \$25 for an initial application, \$50 for an initial license, \$250 for testing, \$50 for license renewal, and \$10 for a duplicate license.

INITIAL MIDWIFERY LICENSE

The Department estimates that it cost the Department \$10 to issue an initial midwifery license based on an average of .5 hours for review X \$20/hour for salary. The Department issued 4 initial midwifery licenses in calendar year 2015, so the Department estimates the total cost was \$40. The midwifery licensing rules that were in effect before July 1, 2013 had established a fee of \$25 for filing an initial midwifery application, \$100 for testing and an additional \$25 for a licensing fee. An applicant was required to submit a filing fee of \$25 with the initial application. The initial application included documentation showing that the applicant completed a midwifery apprenticeship with an assessment of above average or excellent and documentation showing that the applicant obtained knowledge specific to the provision of midwifery services with an assessment of above average or excellent. If the Department determined that the application complied with the requirements, the applicant was approved to take the written examination from NARM. The applicant submitted the notice of the Department's approval and a written examination fee (\$700-\$900, the cost of the written examination increased during the time the rules were in effect) to NARM to qualify to take the written examination. After the applicant passed the NARM written examination, the Department informed the applicant that a \$100 testing fee was required before the applicant could take the Department's practical examination and jurisprudence examination. If the applicant passed the practical and jurisprudence examinations, the applicant was required to submit a \$25 licensing fee before the Department issued an initial midwifery license to the applicant. The total cost for licensing fees and examination fees to an applicant when obtaining an initial midwifery license under the rules that were in effect before July 1, 2013 was \$850 - \$1050 depending on the cost of the NARM written examination. The midwifery licensing rules that became effective July 1, 2013 maintained the established fees of \$25 for filing an initial midwifery application, \$100 for testing, and an additional \$25 for licensing. An applicant submitting an initial application is now required to submit documentation of NARM certification. According to the NARM Candidate Information Book, an individual applying for certification as a professional midwife is required to submit an application fee of \$950 to \$1100 and an examination fee of up to \$900 to NARM. There is a fee of \$115 paid directly to the testing company that is in addition to the NARM fees. Licensing fees and examination fees for an initial midwifery license under the current rules are \$2115 to \$2265

which reflects a minimal increase in costs for obtaining an initial midwifery license, since the increase is less than \$5000.

RENEWAL LICENSE

The Department estimates that it cost the Department \$30 to renew a midwifery license based on an average of 1.5 hours for review X \$20/hour salary. The Department renewed 22 midwifery licenses in calendar year 2015, so the Department estimates that the total cost was \$660.

The midwifery licensing rules that were in effect before July 1, 2013 had established a fee of \$25 for renewing a midwifery license. Although the licensing renewal fee in the current rules remains \$25, a midwife who has not been continuously licensed by the Department since 1999 is required to maintain certification as a professional midwife by NARM. This includes a recertification fee of \$150 every three years, imposing a minimal increase in costs on the 54 licensed midwives/CPMs.

RECORD SUBMISSION

The midwifery rules that were in effect before July 1, 2013 included Exhibit E. Individual Quarterly Report, a three-page form that a licensed midwife was required to complete and submit for each client for whom the midwife provided midwifery services on a quarterly basis. Current midwifery rules require a licensed midwife to submit a report on midwifery services provided to each client no more than 30 days after the termination of midwifery services. The Department has established an on-line report streamlining the reporting process and providing a significant benefit to licensed midwives and the Department.

ENFORCEMENT ACTIVITIES

The Department investigated 5 complaints that the Department estimates it cost the Department between \$3,600 to \$5,400 to investigate.

The Department received 73 midwifery services reports after the required submission date. The Department estimates this cost the Department \$1,460 based on an average of 1 hour review and document drafting time X \$20/hour salary.

Enforcement actions requiring the preparation of a hearing notice average 15 hours program staff time with salaries ranging from \$18 to \$40 with an estimated cost of \$435 per enforcement action. The Department estimates a total cost of approximately \$10,000 for preparing hearing notice for enforcement actions.

The Department assessed 21 civil penalties with the amount assessed ranging from \$50 to \$1,200 with an average amount of \$200 assessed against a specific licensed midwife.

9. **Summary of business competitiveness analyses of the rules**

The Department did not receive a business competitiveness analysis of the rules in the last five years.

10. **Status of the completion of action indicated in the previous five-year-review report**

In the previous five-year-review report, the Department stated that, if the moratorium ended on July 1, 2011, (Laws 2010, Ch. 287, § 18 had continued the moratorium until July 1, 2011), the Department planned to submit a Notice of Final Rulemaking no later than July 1, 2013. Although the moratorium continued, the Department completed an exempt rulemaking according to Laws 2012, Ch. 93, effective July 1, 2013.

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 persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective**

The rules impose the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

12. **Analysis of stringency compared to federal laws**

There are no specific federal laws regulating certified professional midwives or direct entry midwives.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with section 41-1037**

The rules establish midwifery licensing requirements that comply with A.R.S. § 41-1037(A)(2).

14. **Proposed course of action**

Laws 2012, Ch. 93, § 1 established a "midwifery scope of practice advisory committee" to assist the Director in adopting and amending rules related to midwifery scope of practice. Laws 2012, Ch. 93, § 1 included the process for the established committee to provide recommendations concerning proposed rules relating to a change in the scope of practice. The composition and functions of the committee established in R9-16-117 are not the same as the committee's composition and functions in Laws 2012, Ch. 93, § 1. Although the Department plans to solicit input from licensed midwives regarding the licensing process, and may ask the current comment to function in that role, the Department does not believe that there is specific statutory authority requiring the Department to establish a midwife advisory committee in rule. The Department is not reviewing R9-16-117 and allowing R9-16-117 to expire.

The Department plans to amend the remainder of the rules which were completed effective July 1, 2013 and revised the scope of practice for licensed midwives effective July 1, 2014. Current rules allow:

- A midwife to provide midwifery services to a healthy woman, determined through a physical assessment and review of the woman's obstetrical history, whose expected outcome of pregnancy is most likely to be the delivery of a health newborn and intact placenta;
- A midwife's client to refuse a test:
 - For blood type including ABO and Rh, with antibody screen;
 - Urinalysis;
 - HIV;
 - Hepatitis B;
 - Hepatitis C;
 - Rubella titer;
 - Blood glucose screening for diabetes;
 - Hematocrit, Hemoglobin, or a complete blood count;.
 - Gonorrhea;
 - Chlamydia; and
 - Group B Strep Streptococcus; and
- A midwife's client to refuse an ultrasound to determine placental location, fetal presentation, and fetal weight; and
- A midwife under specific circumstances to provide midwifery services to a woman who has had a prior Cesarean section or whose fetus is in a complete breech or a frank presentation.

The Department is reviewing midwifery services outcomes from women receiving midwifery services as reported by licensed midwives to ensure that the changes in the rules related to midwifery services and the midwife's scope of practice do not increase negative health and safety outcomes for a mother or the mother's child. Based on the number of births typically attended by licensed midwives annually, the Department believes that five years of midwifery services outcomes are necessary to have information that is statistically significant.

The Department plans to complete the review of the reports submitted by licensed midwives including the information about health and safety outcomes and any reports submitted by the MAC before the expiration of R9-16-117, and start the rulemaking process to amend the rules by

July, 2019. At that time, the Department will also amend the rules to address any changes determined to be necessary to the scope of practice for licensed midwives or the midwifery licensing rules as a result of the review. The Department also plans to address issues identified in this report at that time. The Department expects to submit a Notice of Final Rulemaking to the Governor's Regulatory Review Council by July 2021. This timetable is subject to change based on statutory priorities, legislative mandates, Department priorities including rulemakings required to prevent imminent harm, and available resources.

INFORMATION FOR INDIVIDUAL RULES

R9-16-101. Definitions

2. Objective

The objective of the rule is to define terms and phrases used in the Article to enable the reader to clearly understand the requirements of the Article and allow for consistent interpretation.

3. Analysis of effectiveness in achieving the objective

The rule is effective in achieving the stated objective but could be more effective if the issues in paragraph 6 were addressed.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable but could be clearer if the definition of "addiction" is repealed because it is not used in the Article, the term "client" is defined, and the definitions are put in alphabetic order, "calendar day" is paragraph #9 and "complete breech" is paragraph #8. In addition, the following terms are only used once in the Article and may be moved to and defined in the rule where the term is used: "abnormal presentation," "aseptic," "current photograph," "infant," "intrapartum," "local registrar," "para," "parity," "prenatal care," "primigravida," "primipara," "serious mental illness," and "substance abuse."

7. Summary of the written criticisms of the rule received within the last 5 years

Criticism: AzAM 5/26/15 letter requests that the definition of "midwifery services" be amended to read "health care, provided by a midwife, related to pregnancy, labor, delivery, and postpartum care. This care includes preconception counseling, well-woman care, preventative care, the promotion of normal birth, the detection of complications in pregnancy and the newborn, the accessing of medical care or other appropriate assistance and the carrying out of emergency measures."

Response: The term "midwife" is defined in A.R.S. § 36-751, as "a person who delivers a baby or provides health care related to pregnancy, labor, delivery and postpartum care of the mother and her infant." The Department believes that the statutory definition of "midwife" establishes the care a midwife is authorized to provide and the definition of midwifery services is consistent with the statutory definition.

Criticism: AzAM 6/2/15 letter requests that the definition of "serious mental illness" in R9-16-101 and requirements in R9-16-111(B)(15) that a midwife not accept for midwifery services a client who has or develops a serious mental illness (SMI) be repealed. The letter states that pregnant patients with SMI, as long as they demonstrate decision making capacity, have the right to be provided with the same treatment options as the general population and the presence of a possible or diagnosed SMI does not remove this right. The written criticism references a

definition of severe mental illness attributed to the National Alliance on Mental Illness (NAMI) which states that severe mental illness includes "major depression, schizophrenia, bipolar disorder, obsessive compulsive disorder, panic disorder, post traumatic stress disorder, and borderline personality disorder." The written criticism also states that one out of every six women will experience unstable mental health during their childbearing years.

Response: The term "serious mental illness" is defined in R9-16-101(44) and includes a reference to the statutory definition of "mental disorder" in A.R.S. § 36-501, which is the equivalent definition to the NAMI definition provided in the written criticism. In order for an individual to have a designation of SMI, the individual's mental disorder needs to be severe and persistent, resulting in a long-term limitation of the individual's functional capacities for primary activities of daily living and the individual's mental disorder impairs or substantially interferes with the capacity of the individual to remain in the community without supportive treatment or services of a long-term or indefinite duration. The Department does not believe that one out of every six women of childbearing years, as stated in the written criticism, could be considered to have a serious mental illness as defined in these rules and the source of this information in the written criticism is not specified. The Department's decision to require a licensed midwife to decline to provide or to transfer the care of a pregnant woman with a "serious mental illness" as defined in this section, is based on the fact that the training, skills, and knowledge required to obtain a midwifery license does not qualify a licensed midwife to be able to identify and address issues related to the pregnant woman's SMI including the effects of prescribed psychotropic drugs on the pregnancy and recognizing signs and symptoms of decompensation, that may impact the woman's pregnancy or to identify and address how the woman's pregnancy may impact the woman's SMI. The limitation in rule is not based on a limitation of the rights of a SMI patient but on the lack of training, skills, and knowledge of a licensed midwife to ensure the health and safety of a pregnant woman with a SMI.

Criticism: AzAM 5/26/15 letter states that "midwives are not mental health professionals and therefore are not trained in the identification and diagnosis of mental disorders, serious mental illness, or severe psychiatric illness."

Response: In R9-16-111(B), there is a list of medical conditions that require the licensed midwife to not accept a pregnant woman for care or to transfer care of the pregnant woman to a qualified health care professional. In R9-16-112, there is a list of medical conditions that a pregnant woman may have that require the licensed midwife to obtain a consultation. Some of the information pertaining to the medical conditions would be obtained by the licensed midwife by asking the pregnant woman if the pregnant woman had or has the medical condition. Some

examples include information about previous uterine surgeries; a history of severe postpartum bleeding, of unknown cause, which required transfusion; a serious mental illness; evidence of substance abuse, including six months prior to pregnancy; history of seizure disorder, history of stillbirth, premature labor, or parity greater than 5; heart disease; kidney disease; and blood disease. The licensed midwife is not required to diagnose all of the medical conditions but is expected to obtain information from the pregnant woman to determine whether the pregnant woman has one of the medical conditions in R9-16-111 or R9-16-112 in order to comply with the requirements.

R9-16-102. Application for Initial Licensure

1. Authorization of the rule by existing statutes

Additional implementing (specific) statute: A.R.S. § 36-753

2. Objective

The objective of the rule is to establish application requirements for obtaining an initial midwifery license.

3. Analysis of effectiveness in achieving the objective

The rule is effective in achieving the stated objective but could be more effective if the issues in paragraph 6 were addressed.

6. Analysis of clarity, conciseness, and understandability

The rule includes the requirements for an application for initial licensure. If an individual submits an application for initial licensure and is approved, the individual does not receive an initial license but receives notification of eligibility to take the midwifery jurisprudence test. Subsection (C)(3) states that an applicant may take the jurisprudence test as many times as desired without paying an additional testing fee but subsection (F) states that the Department shall provide a written notice of denial to an applicant who does not score 80% or higher within 180 calendar days after the applicant receives the notice of eligibility to take the jurisprudence test. Upon notification from the Department that the individual has scored 80% or higher on the jurisprudence test, the individual is required to submit a licensing fee of \$25 and current CPR/first aid documentation. Only after the applicant receives notification of eligibility to take the midwifery jurisprudence test, scores at least 80% within 180 calendar days of notification, and submits a licensing fee and current CPR/first aid documentation does the Department issue an initial license to the applicant. There is no licensing time-frame identified for processing an initial licensure application. Because the terms "licensure" and "licensing" are both used in the rule it is unclear whether the terms have the same meaning or not.

R9-16-103. Renewal

1. Authorization of the rule by existing statutes

Additional implementing (specific) statute: A.R.S. § 36-754

2. Objective

The objective of the rule is to establish the application requirements for renewing a midwifery license.

3. Analysis of effectiveness in achieving the objective

The rule is effective in achieving the stated objective.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

R9-16-104. Administration

2. Objective

The objective of the rule is to establish administrative requirements pertaining to licensed midwives including the process for requesting being listed or not being listed on the Department's public list of licensed midwives, reporting requirements for the death of a client or the client's newborn, and documentation maintenance requirements.

3. Analysis of effectiveness in achieving the objective

The rule is effective in achieving the stated objective.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

R9-16-105. Continuing Education

2. Objective

The objective of the rule is to establish requirements for continuing education for licensed midwives to ensure that a licensed midwife's ability to provide midwifery services is continually improved.

3. Analysis of effectiveness in achieving the objective

The rule is effective in achieving the stated objective but could be more effective if the issue identified in paragraph 6 was addressed.

6. Analysis of clarity, conciseness, and understandability

The rule is concise and understandable but could be clearer if the terms "continuing education unit" and "health professional organization" were defined.

R9-16-106. Name Change; Duplicate License

2. Objective

The objective of the rule is to establish the process for changing a midwife's name on a midwifery license or request a duplicate midwifery license.

3. Analysis of effectiveness in achieving the objective

The rule is effective in achieving the stated objective.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

R9-16-107. Time-frames

1. Authorization of the rule by existing statutes

Authorizing statutes (specific): A.R.S. §§ 41-1073 through 41-1076

2. Objective

The objective of the rule is to establish licensing time frames for midwifery licenses required in A.R.S. Title 41, Chapter 6, Article 7.1.

3. Analysis of effectiveness in achieving the objective

The rule is effective in achieving the stated objective but could be more effective if the rule more clearly delineated the initial license application process.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, conciseness, and understandable.

R9-16-108. Responsibilities of a Midwife; Scope of Practice

2. Objective

The objective of the rule is to establish standards for the provision of midwifery services that ensure the health and safety of a client and the client's newborn.

3. Analysis of effectiveness in achieving the objective

The rule is effective in achieving the stated objective but would be more effective if the issues identified in paragraph 6 were addressed.

6. Analysis of clarity, conciseness, and understandability

The clarity, conciseness, and understandability of the rule are affected by ambiguous or undefined terms such as: "healthy," "client," "credentials," "delivery," "child," "weekly visits," "adequate," "emergency management," "appropriate baby care," and an incorrect use of a sentence in a listing in subsection (K)(2)(c). In addition, the term "document" is used in subsection (I)(5)(d) when the appropriate term is "documentation" and the terms "woman," "mother," and "client" are all used in the rule without any indication if and how the terms are related.

7. Summary of the written criticisms of the rule received within the last 5 years

Criticism: AzAM 8/10/15 letter is a Petition for a Review of an Agency Practice related to the interpretation of R9-16-108(I)(1) and the phrase that requires a licensed midwife to "schedule or arrange" a test for "syphilis as required in A.R.S. § 36-693."

Response: The Department does not believe that the rule provides authority for a licensed midwife to "take the blood sample," that is to actually draw blood from a pregnant client but requires the licensed midwife to "cause a sample of blood of each pregnant woman....to be taken under the direction of a duly licensed physician" as required in A.R.S. § 36-693.

R9-16-109. Informed Consent for Midwifery Services

2. Objective

The objective of the rule is to establish requirements for a licensed midwife to obtain and document informed consent from a woman before the woman becomes the licensed midwife's client and begins receiving midwifery services from the licensed midwife to ensure that the woman has information including the licensed midwife's scope of practice and potentials risks, adverse outcomes, complications, and alternatives associated with an at-home delivery specific to the woman's condition, necessary for the woman to make an informed decision.

3. Analysis of effectiveness in achieving the objective

The rule is effective in achieving the stated objective but would be more effective if the issue identified in paragraph 6 were addressed.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable but the term "client file" is ambiguous because R9-16-115 establishes requirements for "client records."

R9-16-110. Assertion to Decline Required Tests

2. Objective

The objective of the rule is to establish the process and requirements for when a client declines a required test to ensure that the client has received information pertaining to the potential risks for declining a test.

3. Analysis of effectiveness in achieving the objective

The rule is effective in achieving the stated objective but could be more clear if the issue in paragraph 6 was addressed.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable but would be more clear if the undefined and ambiguous term "client file" was addressed. R9-16-115 establishes requirements for "client records."

R9-16-111. Prohibited Practice; Transfer of Care

2. Objective

The objective of the rule is to establish the medical conditions that would require a licensed midwife to not accept for care a pregnant woman or to transfer care of a client or the client's newborn to ensure that the pregnant woman, client, or newborn receives care from a health care professional who has the skills, knowledge, training, and credentials to provide the level of care necessary to ensure the pregnant woman's, client's or newborn's health and safety.

3. Analysis of effectiveness in achieving the objective

The Department is reviewing midwifery services outcomes from clients and clients' newborns receiving midwifery services as reported by licensed midwives to ensure that the changes in the rules related to midwifery services and the licensed midwife's expanded scope of practice do not increase negative health and safety outcomes for a pregnant mother, client, or the client's newborn. Based on the number of births typically attended by licensed midwives annually, the Department believes that five years of midwifery services outcomes are necessary to have information that is statistical significant to determine the effectiveness of the rule in achieving the stated objective.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable but could be more clear if the ambiguous and undefined terms "baby," "evidence," and "excessive" were clarified.

7. Summary of the written criticisms of the rule received within the last 5 years

Criticism: AzAM 5/5/15 letter requests that the language in subsection (B) be changed to read "(A) midwife shall not knowingly accept for midwifery services or continue midwifery services without documentation of condition treated and resolved, following which midwifery services may resume; for a client who has or develops any of the following..."

Response: The Department completed a rulemaking effective July 1, 2013 with extensive opportunities for input from the public and the regulated community. The regulated community did not identify an issue with the language at that time. The Department plans to complete the review of midwifery services outcomes information, the reports submitted by the MAC, and any changes to the industry standards and start the rule amendment process by July 2019. At that time the Department will amend the rules to address any changes determined to be necessary to the scope of practice for licensed midwives or the midwifery licensing rules and to improve the clarity, conciseness, and understandability, as a result of the review.

Criticism: AzAm 5/19/15 letter requests that subsection (B)(12) which prohibits a licensed midwife from accepting a client for midwifery services or continuing midwifery services if the

client develops a blood pressure of 140/90 or an increase of 30 millimeters of Mercury systolic or 15 millimeters of Mercury diastolic over the client's lowest baseline blood pressure for two consecutive readings taken at least six hours apart be moved from the R9-16-111. Prohibited Practice; Transfer of Care to R9-16-112. Required Consultation and be amended as follows: Diastolic blood pressure (dbp) of 90-109 millimeters of mercury or systolic blood pressure greater than or equal to 160 millimeters of mercury taken in two consecutive readings taken at least six hours apart or dbp greater than or equal to 110 millimeters of mercury in one single reading warrants medical consultation.

Criticism: Lacey Smith-Herron 4/30/16 e-mail, submitted to the Governor's Regulatory Review Council and forwarded to the Department, requests that an individual can choose to receive midwifery services from her midwife of choice even if the individual has or had a medical condition that would require a transfer to another health care professional.

Response for the 5/19/15 letter and the 4/30/16 e-mail: The Department is reviewing midwifery services outcomes from women receiving midwifery services as reported by licensed midwives to ensure that the changes in the rules related to midwifery services and the licensed midwife's scope of practice do not increase negative health and safety outcomes for a mother or the mother's child. Based on the number of births typically attended by licensed midwives annually, the Department believes that five years of midwifery services outcomes are necessary to have information that is statistical significant. The Department plans to complete the review of midwifery services outcomes information, the reports submitted by the MAC, and any changes to the industry standards and start the rule amendment process by July 2019. At that time the Department will amend the rules to address any changes determined to be necessary to the scope of practice for licensed midwives or the midwifery licensing rules as a result of the review.

Criticism: AzAM 6/2/15 letter requests that the definition of "serious mental illness" and requirements in R9-16-111(B)(15) that a midwife not accept for midwifery services a client who has or develops a serious mental illness be repealed.

Response: The term "serious mental illness" is defined in the section and includes a reference to the statutory definition of "mental disorder" in A.R.S. § 36-501 which is the equivalent definition to the NAMI definition provided in the written criticism. In order for an individual to have a designation of SMI, the individual's mental disorder needs to be severe and persistent, resulting in a long-term limitation of the individual's functional capacities for primary activities of daily living and the individual's mental disorder impairs or substantially interferes with the capacity of the individual to remain in the community without supportive treatment or services of a long-term or indefinite duration. The Department does not believe that one out of every six women of

childbearing years, as stated in the written criticism, could be considered to have a serious mental illness and the source of this information in the written criticism is not specified. The Department's decision to require a licensed midwife to decline to provide or to transfer the care of a pregnant woman with a "serious mental illness" as defined in this section, is based on the fact that the training, skills, and knowledge required to obtain a midwifery license does not qualify a licensed midwife to be able to identify and address issues related to the pregnant woman's SMI including the effects of prescribed psychotropic drugs on the pregnancy and recognizing signs and symptoms of decompensation, that may impact the woman's pregnancy or to identify and address how the woman's pregnancy may impact the woman's SMI. The limitation in rule is not based on a limitation of the rights of a SMI patient but on the lack of training, skills, and knowledge of a licensed midwife to ensure the health and safety of a pregnant woman with a SMI.

Criticism: AzAM 6/30/15 letter requests that the requirement in R9-16-111(B)(10)(b) that a midwife not accept for midwifery services a client or continue midwifery services for a client who has active syphilis be repealed.

Response: R9-16-108(A) requires that a midwife provides midwifery services only to a healthy woman whose expected outcome of pregnancy is most likely to be the delivery of a healthy newborn. A pregnant woman with active syphilis is not a healthy woman and the fact that the pregnant woman has active syphilis jeopardizes the delivery of a health newborn. The Department believes that, in order to provide the best possible outcome for a pregnant woman who has syphilis and the pregnant woman's newborn, a health care professional with knowledge, skills, training, and credentials, provides medical services to the pregnant woman.

Criticism: AzAM 7/10/15 letter requests that the requirement for a licensed midwife to transfer care of a client who experiences "a postpartum hemorrhage of greater than 500 milliliters in the current pregnancy" in R9-16-111(B)(25) be moved to R9-16-112, Required Consultation and the following criteria added to be met in the postpartum period:

- a. The hemorrhage responds to treatments available in the out of hospital setting and is well controlled
 - i. The client is alert and oriented
 - ii. The client is not experiencing syncope greater than one occurrence
 - iii. The client's blood pressure remains within normal limits of between 90/60 and 140/90; or
- b. The client has been discharged from physician care following a transfer of care for hemorrhage

Response: The Department believes that, in order to provide the best possible outcome for a pregnant woman who has a postpartum hemorrhage of greater than 500 milliliters in the current pregnancy, a health care professional with knowledge, skills, training, and credentials, provides medical services to the pregnant woman.

Criticism: AzAM 7/21/15 letter requests that the requirement for a licensed midwife to transfer care of a client who experiences "a gestation beyond 42 weeks" in R9-16-111(B)(21) be moved to R9-16-112, Required Consultation.

Response: R9-16-108(A) requires that a midwife provides midwifery services only to a healthy woman whose expected outcome of pregnancy is most likely to be the delivery of a healthy newborn. When a woman's pregnancy extends beyond 42 weeks gestation, there is a risk that the outcome of the pregnancy will not be the delivery of a healthy newborn. The Department believes that, in order to provide the best possible outcome for a pregnant woman who experiences a gestation beyond 42 weeks and the pregnant newborn's unborn fetus, a health care professional with knowledge, skills, training, and credentials, provides medical services to the pregnant woman.

R9-16-112. Required Consultation

2. Objective

The objective of the rule is to establish the medical conditions that would require a licensed midwife to consult with a health care professional pertaining to the care of a client or the client's newborn to ensure that the client or the client's newborn receives care based on the consultation with the health care professional who has the appropriate skills, knowledge, training, and credentials to recommend the care necessary to ensure the client or the client's newborn's health and safety.

3. Analysis of effectiveness in achieving the objective

The rule is effective in achieving the stated objective.

6. Analysis of clarity, conciseness, and understandability

The rule is clear concise, and understandable.

R9-16-113. Emergency Measures

2. Objective

The objective of the rule is to require a licensed midwife to notify an emergency medical services provider when the licensed midwife determines that the health or safety of a client or the client's newborn is at risk and to establish the specific emergency measures that a licensed midwife is authorized and allowed to provide.

3. Analysis of effectiveness in achieving the objective

The rule is effective in achieving the stated objective.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

R9-16-114. Midwife Report after Termination of Midwifery Services

2. Objective

The objective of the rule is to establish the specific information pertaining to a client or a client's newborn that a licensed midwife is requirement to submit to the Department that will assist with monitoring whether the licensed midwife is complying with applicable health and safety standards in rules and statutes when providing midwifery services to the client and the client's newborn.

3. Analysis of effectiveness in achieving the objective

The rule is effective in achieving the stated objective because the Department reviews the client or the client's newborn's information in the report submitted by a licensed midwife to determine if there is reason to believe that the licensed midwife may not have complied with applicable health and safety rules and statutes. If the Department determines that more information is necessary, the Department may require the licensed midwife to provide the client record or the client's newborn's record according to A.R.S. § 36-756.01.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

R9-16-115. Client and Newborn Records

2. Objective

The objective of the rule is to establish recordkeeping requirements for the midwifery services provided to a client or the client's newborn.

3. Analysis of effectiveness in achieving the objective

The rule is effective in achieving the stated objective.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

R9-16-116. Denial, Suspension, or Revocation of License; Civil Penalties; Procedures

1. Authorization of the rule by existing statutes

Implementing statute (specific): A.R.S. § 36-756

2. Objective

The objective of the rule is to establish the conditions or circumstances under which the Department may deny, suspend, or revoke a midwife's license to practice midwifery or assess a midwife a civil penalty.

3. Analysis of effectiveness in achieving the objective

The rule is effective in achieving the stated objective but may be more clear if the Department clarified the phrase "deny, suspend, or revoke a license permanently or for a definite period of time." It is unclear whether the phrase "permanently or for a definite period of time" is supposed to modify "deny, suspend, or revoke" or just "revoke." Typically, when the Department revokes a license, the revocation is permanent. A license that is suspended can be reinstated, usually after the licensee demonstrates compliance or an ability to comply.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable but adding the phrase "required by A.R.S. Title 36, Chapter 6, Article 7.1 or these rules" to the language "Falsification of records" in subsection (3) would make the requirement clearer.

8. Estimated economic, small business, and consumer impact comparison

Although the previous rule established a civil penalty of \$50 for the first offense and \$100 for each subsequent offense, the current rule does not establish a specific amount or a method to determine a specific amount. The current rules may have increased costs for civil penalties but it is difficult to determine because A.R.S. § 36-756(D) states that "the director may assess a civil penalty of not more than \$100 for each violation" but there is no stated criteria in rule as to how the Department determines if a civil penalty will be \$10 or \$100.



Arizona Association of Midwives
 Legal and Regulatory Committee
 PO Box 80751
 Phoenix, AZ 85060

Recieved

MAY 14 2015

05 May 2015

Jeff Bloomberg, J.D., Manager
 Cory Nelson, Interim Director AzDHS
 Office of Administrative Council and Rules
 1740 W Adams #203
 Phoenix, AZ 85007

**Special Licensing
 Bureau of Special Licensing**
 ADHS CONTROLLER'S OFFICE
 CASH RECEIPTS UNIT
MAY 14 2015
RECEIVED

Mr. Bloomberg and Director Nelson:

The Arizona Association of Midwives (AAM) is submitting the attached Petition for a Rule (or Review of a Practice or Policy) to the Arizona Department of Health Services (AzDHS) as permitted in Arizona Revised Statutes § 41-1033 (Administrative Procedures Act).

For years AzDHS has been aware of antiquated, burdensome and legally uncertain rules pertaining to midwifery practice and has failed to respond to midwives multiple informal requests to updates. AzDHS has cited the long standing governors' moratoriums on rulemaking as the rationale for taking no action to correct multiple errors within the rules that govern licensed midwives in Arizona. In addition, at the rules rewrite process that occurred in 2012 as a result of HB2247, the midwives submitted a report to AzDHS detailing the ways in which midwifery rules are problematic, a report which the department effectively ignored.

Within the most recent Governor's Order regarding the internal review of administrative rules, G.O. 2015-01 issued on January 5, 2015, the order clearly states that each state agency has the ability to request new rule making powers in order "to prevent a significant threat to the public health, peace or safety." Many of the problematic rules directly affect the health and safety of women and their newborns. AAM is therefore requesting that the Department exercise its ability to submit a request to the Office of the Governor in order to address the enclosed Petition for a Rule.

You may direct any questions, clarifications or responses to the AAM Legal and Regulatory Committee which is appointed by the AAM Board of Directors at the address listed above.

Sincerely,
 Legal and Regulatory Committee of AAM

CCd: Midwifery Advisory Committee % Carla Berg, Bureau Chief, Department of Special Licensing
 Governor Doug Ducey

CURRENT RULE

A.A.C. R9--16-111. Prohibitive Practice; Transfer of Care

B: A midwife shall not accept for midwifery services **or continue midwifery services** for a client who has or develops any of the following: 1-26 [lists conditions]

1. A previous surgery that involved:
 - a. An incision in the uterus, except as provided in R9-16-108(B)(1); or
 - b. A previous uterine surgery that enters the myometrium;
2. Multiple fetuses
3. Placenta previa or placenta accreta;
4. A history of severe postpartum bleeding, of unknown cause, which required transfusion;
5. Deep vein thrombosis or pulmonary embolism;
6. Uncontrolled gestational diabetes;
7. Insulin-dependent diabetes;
8. Hypertension;
9. Rh disease with positive titers;
10. Active:
 - a. Tuberculosis;
 - b. Syphilis;
 - c. Genital herpes at the onset of labor;
 - d. Hepatitis until treated and recovered, following which midwifery services may resume; or
 - e. Gonorrhea until treated and recovered, following which midwifery services may resume;
11. Preeclampsia or eclampsia persisting after the second trimester;
12. A blood pressure of 140/90 or an increase of 30 millimeters of Mercury systolic or 15 millimeters of Mercury diastolic over the client's lowest baseline blood pressure for two consecutive readings taken at least six hours apart;
13. A persistent hemoglobin level below 10 grams or a persistent hematocrit below 30 during the third trimester;
14. A pelvis that will not safely allow a baby to pass through during labor;
15. A serious mental illness;
16. Evidence of substance abuse, including six months prior to pregnancy, to one of the following, evident during an assessment of a client;
 - a. Alcohol,
 - b. Narcotics, or
 - c. Other drugs;
17. Except as provided in R9-16-108(B)(2), a fetus with an abnormal presentation;
18. Labor beginning before the beginning of 36 weeks gestation;
19. A progression of labor that does not meet the requirements of R9-16-108(J)(4), if applicable;
20. Gestational age greater than 34 weeks with no prior prenatal care;
21. A gestation beyond 42 weeks;
22. Presence of ruptured membranes without onset of labor within 24 hours;
23. Abnormal fetal heart rate consistently less than 120 beats per minute or more than 160 beats per minute;
24. Presence of thick meconium, blood-stained amniotic fluid, or abnormal fetal heart tones;
25. A postpartum hemorrhage of greater than 500 millimetres in the current pregnancy; or
26. A non-bleeding placenta retained for more than 60 minutes

PROPOSED RULE

A.A.C. R9-16-111. Prohibitive Practice; Transfer of Care

B. A midwife shall not knowingly accept for midwifery services or continue midwifery services without documentation of condition treated and resolved, following which midwifery services may resume; for a client who has or develops any of the following: 1-26 [lists conditions]

27. A previous surgery that involved:
 - a. An incision in the uterus, except as provided in R9-16-108(B)(1); or
 - b. A previous uterine surgery that enters the myometrium;
28. Multiple fetuses
29. Placenta previa or placenta accreta;
30. A history of severe postpartum bleeding, of unknown cause, which required transfusion;
31. Deep vein thrombosis or pulmonary embolism;
32. Uncontrolled gestational diabetes;
33. Insulin-dependent diabetes;
34. Hypertension;
35. Rh disease with positive titers;
36. Active:
 - a. Tuberculosis;
 - b. Syphilis;
 - c. Genital herpes at the onset of labor;
 - d. Hepatitis until treated and recovered, following which midwifery services may resume; or
 - e. Gonorrhea until treated and recovered, following which midwifery services may resume;
37. Preeclampsia or eclampsia persisting after the second trimester;
38. A blood pressure of 140/90 or an increase of 30 millimeters of Mercury systolic or 15 millimeters of Mercury diastolic over the client's lowest baseline blood pressure for two consecutive readings taken at least six hours apart;
39. A persistent hemoglobin level below 10 grams or a persistent hematocrit below 30 during the third trimester;
40. A pelvis that will not safely allow a baby to pass through during labor;
41. A serious mental illness;
42. Evidence of substance abuse, including six months prior to pregnancy, to one of the following, evident during an assessment of a client;
 - a. Alcohol,
 - b. Narcotics, or
 - c. Other drugs;
43. Except as provided in R9-16-108(B)(2), a fetus with an abnormal presentation;
44. Labor beginning before the beginning of 36 weeks gestation;
45. A progression of labor that does not meet the requirements of R9-16-108(J)(4), if applicable;
46. Gestational age greater than 34 weeks with no prior prenatal care;
47. A gestation beyond 42 weeks;
48. Presence of ruptured membranes without onset of labor within 24 hours;
49. Abnormal fetal heart rate consistently less than 120 beats per minute or more than 160 beats per minute;
50. Presence of thick meconium, blood-stained amniotic fluid, or abnormal fetal heart tones;

51. A postpartum hemorrhage of greater than 500 millimetres in the current pregnancy; or
52. A non-bleeding placenta retained for more than 60 minutes

JUSTIFICATION - Midwife-led continuity of care is provided in a multidisciplinary network of consultation and referral with other care providers. This contrasts with medical-led models of care where an obstetrician or family physician is primarily responsible for care. In shared-care models, responsibility is shared between different healthcare professionals. Organizations worldwide and in the United States, such as the Homebirth Summit, have concentrated on shared care during a medical transport which recognizes that midwives have proven competency at medical assessment for conditions which would require a transfer of care or consultation. Once consulted or transferred, within a multidisciplinary network, the optimal care for the woman would be the ability to maintain continuity of care by her midwife once the condition necessitating transfer of care or consultation is resolved.

The midwifery prohibited practice section states that “[a] midwife shall not accept for midwifery services or continue midwifery services for a client who *has or develops* any of the following” twenty-six different health conditions. A.A.C. R9-16-111(B). In the past, this provision was interpreted to allow a midwife to resume care once the health condition had been treated or ceased to exist. Since the writing of the new rules, the Department has taken action against midwives and had opined in a training session that this “Prohibited Practice” section does not allow a midwife to resume care. This position is problematic.

First, interpreting the rules in this way arbitrarily excludes healthy, low-risk women from midwifery services. Many of the health conditions within section 111(B) are not permanent conditions and can be resolved. By interpreting these rules to not allow midwives to resume care, the Department is excluding healthy women from the care providers of their choice.

Second, this interpretation is not consistent with the plain language of the rules. When the Department revisited the midwifery rules in 2013, the Department chose to use the words “*has or develops*.” The Department chose to use these words in the present perfect tense, indicating that a midwife cannot accept or continue care when a client *presently* has one of the twenty-six different conditions. The logical leap that the Department has made is that this section also prohibits care when a client *has had* any of these conditions.

Third, midwives are mandated in A.A.C. R9-108-K to provide postpartum care for the mother *and* the newborn. The interpretation of this rule offered by the Department to immediately terminate all midwifery services when the midwifery client experiences any of the conditions within 111(B) ignores that there are two people the midwife is legally tasked with caring for in the days following birth.

Last, as currently interpreted, these rules do not provide guidance on a midwife’s responsibilities in the event that her patient does not consent to a transfer of care. Both the Arizona Supreme Court and the United States Supreme Court have held that patients have a right to refuse medical treatment, even when that treatment is lifesaving. *Cruzan v. Director, Missouri Department of Health*, 497 U.S. 261, 277 (1990); *Rasmussen by Mitchell v. Fleming*, 154 Ariz. 207, 215, 741 P.2d 674, 682 (1987).

The Department of Health has been aware for years that the rules place the midwife in an impossible situation if her client exercises her constitutionally protected right to decline treatment: the midwife must choose between keeping her licence and her ethical responsibility to not abandon her patient. This rule change would provide the midwife with the guidance she needs while still protecting public health and safety.

R9-16-101. 30 Definition of 'midwifery services': *"Midwifery services" means health care, provided by a midwife to a mother, related to pregnancy, labor, delivery or postpartum care.*

REFERENCE LIST

- Sandall J, Soltani H, Gates S, Shennan A, Devane D. (2013). Midwife-led continuity models versus other models of care for childbearing women. Cochrane. Accessed online 05 May 2015. http://www.cochrane.org/CD004667/PREG_midwife-led-continuity-models-versus-other-models-of-care-for-childbearing-women.
- Midwives Alliance Board. (2011). Core Competencies for Basic Midwifery Practice. Accessed online 05 May 2015. <http://mana.org/pdfs/MANACoreCompetenciesColor.pdf>
- Home Birth Summit. (2014) Best Practice Guidelines: Transfer from Planned Home Birth to Hospital. Accessed online 05 May 2015. http://www.homebirthsummit.org/wp-content/uploads/2014/03/HomeBirthSummit_BestPracticeTransferGuidelines.pdf



Arizona Association of Midwives
Legal and Regulatory Committee
PO Box 80751
Phoenix, AZ 85060

AZDHS CONTROLLER'S OFFICE
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MAY 21 2015

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19 May 2015

Dr. Cara Christ, Director AzDHS
Office of Administrative Council and Rules
1740 W Adams #203
Phoenix, AZ 85007

Dr Christ:

The Arizona Association of Midwives (AAM) is submitting the attached Petition for a Rule to the Arizona Department of Health Services (AzDHS) as permitted in Arizona Revised Statutes § 41-1033 (Administrative Procedures Act). This is the **second** petition submitted thus far.

For years AzDHS has been aware of antiquated, burdensome and legally uncertain rules pertaining to midwifery practice and has failed to respond to midwives multiple informal requests to updates. AzDHS has cited the long standing governors' moratoriums on rulemaking as the rationale for taking no action to correct multiple errors within the rules that govern licensed midwives in Arizona. In addition, at the rules rewrite process that occurred in 2012 as a result of HB2247, the midwives submitted a report to AzDHS detailing the ways in which midwifery rules are problematic, a report which the department effectively ignored.

Within the most recent Governor's Order regarding the internal review of administrative rules, G.O. 2015-01 issued on January 5, 2015, the order clearly states that each state agency has the ability to request new rule making powers in order "to prevent a significant threat to the public health, peace or safety." Many of the problematic rules directly affect the health and safety of women and their newborns. AAM is therefore requesting that the Department exercise its ability to submit a request to the Office of the Governor in order to address the enclosed Petition for a Rule.

You may direct any questions, clarifications or responses to the AAM Legal and Regulatory Committee which is appointed by the AAM Board of Directors at the address listed above.

Sincerely,
Legal and Regulatory Committee of AAM

Received

MAY 21 2015

Office of Special Licensing

Enclosure: Petition for a Rule Change - Blood Pressure

CCd: Midwifery Advisory Committee % Carla Berg, Bureau Chief, Dept. of Special Licensing
Arizona State Governor Doug Ducey
Jeff Bloomberg, J.D., Manager Office of Administrative Council and Rules
Arizona Association of Midwives Members

CURRENT RULE

A.A.C. R9-16-111 Prohibited Practice; Transfer of Care

B. A midwife shall not accept for midwifery services or continue midwifery services for a client who has or develops any of the following:

12. A blood pressure of 140/90 or an increase of 30 millimeters of Mercury systolic or 15 millimeters of Mercury diastolic over the client's lowest baseline blood pressure for two consecutive readings taken at least six hours apart.

PROPOSED RULE

Remove from Prohibited Practice; Transfer of Care and move to Required Consultation; change limits to as follows: Diastolic blood pressure (dBp) of 90-109 millimeters of mercury or systolic blood pressure greater than or equal to 160 millimeters of mercury taken in two consecutive readings taken at least six hours apart, OR dBp greater than or equal to 110 millimeters of mercury in one single reading warrants **medical consultation**.

JUSTIFICATION

140/90 and a rise of 30/15 as limits set in current rule do not reflect standard of care. A definition of hypertension in pregnancy due to a relative rise in blood pressure has a high false positive rate in pregnancy, due to the variability of blood pressure at certain stages of gestation, thus this criterion is no longer endorsed. Current guidelines for standard of care by all major obstetric and midwifery organizations define the point at which blood pressure during pregnancy warrant further evaluation as defined above in the proposed rule. Further, current guidelines recommend expectant management and medical consultation rather than immediate transfer of care. Midwives are experts in pregnancy education, spending at average an hour with patients, to discuss lifestyle and diet changes as well as relative risk of hypertension and its associated diseases to both the mother and fetus. With consultation and continued midwifery care, the woman is receiving the best possible anticipatory guidance and monitoring.

A.A.C. R9-16-111 (B) 8. already establishes a diagnosis of hypertension as prohibited practice and A.A.C. R9-16-111 (B) 11 already establishes a diagnosis of preeclampsia or eclampsia as prohibited practice. A rise in blood pressure alone is not justification for termination of care. Medical consultation serves the purpose of screening to rule out the diagnoses of hypertension and preeclampsia.

REFERENCE LIST

- ACOG Committee on Obstetric Practice. (2015). *Emergent Therapy for Acute - Onset, Severe Hypertension During Pregnancy and the Postpartum Period*. Committee Opinion No 623.
- ACOG Task Force on Hypertension in Pregnancy. (2013). *Hypertension in Pregnancy*. *Obstetrics & Gynecology*, Vol 122, No 5, November 2013.
- Canadian Hypertensive Disorders of Pregnancy Working Group. (2014). *Diagnosis, Evaluation, and Management of the Hypertensive Disorders of Pregnancy: Executive Summary*. *J Obstetrics Gynaecol Can* 2014; (5): 416-438.
- HDP CPG Working Group. Association of Ontario Midwives. (2012). *Hypertensive Disorders of Pregnancy*. Available online: http://www.ontariomidwives.ca/images/uploads/guidelines/No15_CPG_HDP_062612.pdf. (Clinical Practice Guideline No. 15).
- National Institute for Health and Care Excellence. (2014). *Antenatal care routine care for the healthy pregnant woman*. Available online: <https://www.nice.org.uk/guidance/cg62/resources/guidance-antenatal-care-pdf>



Arizona Association of Midwives
Legal and Regulatory Committee
PO Box 80751
Phoenix, AZ 85060

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15 MAY 27 PM 12:49
ADHS
DIRECTORS OFFICE

26 May 2015

Dr. Cara Christ, Director AzDHS
Office of Administrative Council and Rules
1740 W Adams #203
Phoenix, AZ 85007

Dr Christ:

The Arizona Association of Midwives (AAM) is submitting the attached Petition for a Rule to the Arizona Department of Health Services (AzDHS) as permitted in Arizona Revised Statutes § 41-1033 (Administrative Procedures Act). This is the **third** petition submitted thus far.

For years AzDHS has been aware of antiquated, burdensome and legally uncertain rules pertaining to midwifery practice and has failed to respond to midwives multiple informal requests to updates. AzDHS has cited the long standing governors' moratoriums on rulemaking as the rationale for taking no action to correct multiple errors within the rules that govern licensed midwives in Arizona. In addition, at the rules rewrite process that occurred in 2012 as a result of HB2247, the midwives submitted a report to AzDHS detailing the ways in which midwifery rules are problematic, a report which the department effectively ignored.

Within the most recent Governor's Order regarding the internal review of administrative rules, G.O. 2015-01 issued on January 5, 2015, the order clearly states that each state agency has the ability to request new rule making powers in order "*to prevent a significant threat to the public health, peace or safety.*" Many of the problematic rules directly affect the health and safety of women and their newborns. AAM is therefore requesting that the Department exercise its ability to submit a request to the Office of the Governor in order to address the enclosed Petition for a Rule.

You may direct any questions, clarifications or responses to the AAM Legal and Regulatory Committee which is appointed by the AAM Board of Directors at the address listed above.

Sincerely,
Legal and Regulatory Committee of AAM.

Enclosure: Petition for a Rule Change - Midwifery Services Definition

CCd: Midwifery Advisory Committee % Carla Berg, Bureau Chief, Dept. of Special Licensing
Arizona State Governor Doug Ducey
Jeff Bloomberg, J.D., Manager Office of Administrative Council and Rules
Arizona Association of Midwives Members

CURRENT RULE

A.A.C. R9-16-101. 30 "Midwifery services" means health care, provided by a midwife to a mother, related to pregnancy, labor, delivery, and postpartum care.

PROPOSED RULE

"Midwifery services" means health care, provided by a midwife, related to pregnancy, labor, delivery, and postpartum care. This care includes preconception counseling, well-woman care, preventative care, the promotion of normal birth, the detection of complications in pregnancy and the newborn, the accessing of medical care or other appropriate assistance and the carrying out of emergency measures.

JUSTIFICATION

Midwifery practice according to AWONN is the "... independent management of women's healthcare, focusing on pregnancy, childbirth, the postpartum period, care of the newborn and the family planning and gynecological care. The core of midwifery practice contains health promotion, management of normal birth, assessment and detection of complications, and referral as needed." The certified and licensed midwife in Arizona has demonstrated competency via a national certification and state exam. Licensed midwives have worked in partnership with women to give the necessary support, clinical care and recommendations pertaining to health promotion, reproductive health and wellness, care of the newborn and the carrying out of emergency measures if needed since Arizona enacted regulations in the 1970s. In addition, national and international standards for education, training, competency and credentialing of midwives include the midwifery services outlined above. Midwives are recognized as experts in normal birth and wellness care globally and are held to a set of professional standards and ethics that require the midwife to consult or refer to another healthcare provider when the needs for care exceed the competency of the midwife.

REFERENCE LIST

- Association of Women's Health, Obstetric and Neonatal Nursing. (2012). *Midwifery Position Statement*. Accessed online 5/16/15 at https://www.awhonn.org/awhonn/content.do?name=07_PressRoom/07_PositionStatements.htm
- International Confederation of Midwives. (2011). *ICM International Definition of the Midwife*. Accessed online 05/16/15 at <http://www.internationalmidwives.org/assets/uploads/documents/Definition%20of%20the%20Midwife%20-%202011.pdf>
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- Midwives Alliance of North America. (2011). *Core competencies for basic midwifery practice*. Accessed online 05/16/15 at <http://mana.org/pdfs/MANACoreCompetenciesColor.pdf>
- Midwives Association of Washington State. (2011). *Washington State Orientation Manual of Licensing and Professional Practice Issues for Midwives*. Accessed online 05/19/2015 at <http://www.washingtonmidwives.org/documents/OrientationManual-forLMs2011.pdf>
- New Mexico Midwives Association. (2008). *Practice Guidelines for New Mexico Midwives*. Accessed online 04/16/15 at http://www.newmexicomidwifery.org/images/uploads/NMMA_2008_practice_guidelines.pdf
- State of Vermont. (2015). *The Vermont Statutes Online. Title 26: Professions And Occupations. Chapter 85: Midwives*. Accessed online 05/16/15 at <http://legislature.vermont.gov/statutes/fullchapter/26/085>



Arizona Association of Midwives
Legal and Regulatory Committee
PO Box 80751
Phoenix, AZ 85060

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JUN 08 2015

ADHS/Clerk of the Department
Office of Administrative Counsel

02 June 2015

Dr. Cara Christ, Director AzDHS
Office of Administrative Council and Rules
1740 W Adams #203
Phoenix, AZ 85007

Dr Christ:

The Arizona Association of Midwives (AAM) is submitting the attached Petition for a Rule to the Arizona Department of Health Services (AzDHS) as permitted in Arizona Revised Statutes § 41-1033 (Administrative Procedures Act). This is the **fourth** petition submitted thus far.

For years AzDHS has been aware of antiquated, burdensome and legally uncertain rules pertaining to midwifery practice and has failed to respond to midwives multiple informal requests to updates. AzDHS has cited the long standing governors' moratoriums on rulemaking as the rationale for taking no action to correct multiple errors within the rules that govern licensed midwives in Arizona. In addition, at the rules rewrite process that occurred in 2012 as a result of HB2247, the midwives submitted a report to AzDHS detailing the ways in which midwifery rules are problematic, a report which the department effectively ignored.

Within the most recent Governor's Order regarding the internal review of administrative rules, G.O. 2015-01 issued on January 5, 2015, the order clearly states that each state agency has the ability to request new rule making powers in order "*to prevent a significant threat to the public health, peace or safety.*" Many of the problematic rules directly affect the health and safety of women and their newborns. AAM is therefore requesting that the Department exercise its ability to submit a request to the Office of the Governor in order to address the enclosed Petition for a Rule.

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Sincerely,
Legal and Regulatory Committee of AAM

Enclosure: Petition for a Rule Change - Serious Mental Illness

CCd: Midwifery Advisory Committee % Carla Berg, Bureau Chief, Dept. of Special Licensing
Arizona State Governor Doug Ducey
Jeff Bloomberg, J.D., Manager Office of Administrative Council and Rules
Arizona Association of Midwives Members

CURRENT RULE

R9-16-111. Prohibited Practice; Transfer of Care

B. A midwife shall not accept for midwifery services or continue midwifery services for a client who has or develops any of the following:

15. A serious mental illness;

A.A.C R9-16-101

44. "Serious mental illness" means a condition in an individual who is eighteen years of age or older and who exhibits emotional or behavioral functioning, as a result of a mental disorder as defined in A.R.S. § 36-501 that:

a. Is severe and persistent, resulting in a long-term limitation of their functional capacities for primary activities of daily living such as interpersonal relationships, homemaking, self-care, employment and recreation; and b. Impairs or substantially interferes with the capacity of the individual to remain in the community without supportive treatment or services of a long-term or indefinite duration

For reference:

A.R.S. § 36-501

24. "Mental disorder" means a substantial disorder of the person's emotional processes, thought, cognition or memory. Mental disorder is distinguished from:

(a) Conditions that are primarily those of drug abuse, alcoholism or intellectual disability, unless, in addition to one or more of these conditions, the person has a mental disorder.

(b) The declining mental abilities that directly accompany impending death.

(c) Character and personality disorders characterized by lifelong and deeply ingrained antisocial behavior patterns, including sexual behaviors that are abnormal and prohibited by statute unless the behavior results from a mental disorder.

PROPOSED RULE

Eliminate A.A.C. R0-16-111 (B) 15 and A.A.C R9-16-101 44.

JUSTIFICATION

Within healthcare ethics and standard of care, individuals are expected to make medical decisions on their own behalf unless they are legally incompetent to do so. Major obstetric organizations recommend that pregnant patients with SMI be provided the same treatment options as the general population as long as they demonstrate decision making capacity. The presence of a possible or diagnosed SMI does not remove this right. Many mental health organizations have made great strides towards removing the stigma and discrimination associated with mental illness. Prohibiting individuals with SMI from obtaining midwifery care unless they have been proven legally incompetent is discriminatory.

According to the National Alliance on Mental Illness (NAMI), severe mental illness includes "major depression, schizophrenia, bipolar disorder, obsessive compulsive disorder (OCD), panic disorder, post traumatic stress disorder (PTSD) and borderline personality disorder." One out of every six women will experience unstable mental health during their childbearing years, with depression being most common. Women with depression have been noted to enter midwifery care at disproportionate rates and midwifery organizations encourage midwives to integrate care of women with depression into their practices. Midwifery care has been shown to improve postnatal outcomes for women with chronic clinical depression.

Further, midwives are not mental health professional and therefore are not trained in the identification and diagnosis of mental disorders, serious mental illness, or severe psychiatric illness. The rule and definition as provided, A.A.C. R0-16-111 (B) 15 and A.A.C R9-16-101 44, places the responsibility on the midwife to determine whether the midwifery client has a “*substantial disorder of the person's emotional processes, thought, cognition or memory.*”

Other disease and illness processes listed within AAC R9-106 as prohibited practice or consultation (for example, seizure disorder, heart disease, kidney disease, blood disease, active tuberculosis, etc.), that are recognized as outside of the scope of practice of midwifery care do not contain the expectation that the midwife identify and diagnose the condition. Rather, the expectation is that if the midwifery client presents with a history of these conditions or reports a current diagnosis of these conditions, the midwife will the appropriately consult or transfer care. By defining SMI in A.A.C. and not defining other diseases and illnesses, the implied expectation is that the midwife understand, identify and diagnose. This is an unreasonable expectation.

REFERENCE LIST

- Babbitt, Kriste E. et al. (2014). Professionally responsible intrapartum management of patients with major mental disorders. *American Journal of Obstetrics & Gynecology* , Volume 210 , Issue 1 , 27 - 31. Accessed online on 05/28/15 at [http://www.ajog.org/article/S0002-9378\(13\)00632-7/abstract](http://www.ajog.org/article/S0002-9378(13)00632-7/abstract)
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- Buchanan, A. (2004). Mental capacity, legal competence and consent to treatment. *Journal of the Royal Society of Medicine*, 97(9), 415–420. Accessed online 05/28/15 at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1079581/>
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- Wooster, E. (2007). Supporting mental health. *RCM Midwives*. Volume 10 No.4 April 2007



Arizona Association of Midwives
Legal and Regulatory Committee
PO Box 80751
Phoenix, AZ 85060

30 June 2015

Dr. Cara Christ, Director AzDHS
Office of Administrative Council and Rules
1740 W Adams #203
Phoenix, AZ 85007

Dr Christ:

The Arizona Association of Midwives (AAM) is submitting the attached Petition for a Rule to the Arizona Department of Health Services (AzDHS) as permitted in Arizona Revised Statutes § 41-1033 (Administrative Procedures Act). This is the **fifth** petition submitted thus far.

For years AzDHS has been aware of antiquated, burdensome and legally uncertain rules pertaining to midwifery practice and has failed to respond to midwives multiple informal requests to updates. AzDHS has cited the long standing governors' moratoriums on rulemaking as the rationale for taking no action to correct multiple errors within the rules that govern licensed midwives in Arizona. In addition, at the rules rewrite process that occurred in 2012 as a result of HB2247, the midwives submitted a report to AzDHS detailing the ways in which midwifery rules are problematic, a report which the department effectively ignored.

Within the most recent Governor's Order regarding the internal review of administrative rules, G.O. 2015-01 issued on January 5, 2015, the order clearly states that each state agency has the ability to request new rule making powers in order "to prevent a significant threat to the public health, peace or safety." Many of the problematic rules directly affect the health and safety of women and their newborns. AAM is therefore requesting that the Department exercise its ability to submit a request to the Office of the Governor in order to address the enclosed Petition for a Rule.

You may direct any questions, clarifications or responses to the AAM Legal and Regulatory Committee which is appointed by the AAM Board of Directors at the address listed above.

Sincerely,
Legal and Regulatory Committee of AAM

Received

JUL 1 - 2015

Office of Special Licensing

Enclosure: Petition for a Rule Change - Gestation Beyond 42 Weeks

CCd: Midwifery Advisory Committee % Carla Berg, Bureau Chief, Dept. of Special Licensing
Arizona State Governor Doug Ducey
Jeff Bloomberg, J.D., Manager Office of Administrative Council and Rules
Arizona Association of Midwives Members

Petition for a Rule Change - Gestation beyond 42 weeks

Submitted to Arizona Department of Health Services on June 30, 2015

by The Arizona Association of Midwives Legal and Regulatory Committee

Page 1 of 2

CURRENT RULE

R9-16-111. Prohibited Practice; Transfer of Care

21. A gestation beyond 42 weeks;

PROPOSED RULE

R9-16-112. Required Consultation

A. A midwife shall obtain a consultation at the time a client is determined to have any of the following during the current pregnancy:

A gestation beyond 42 weeks;

JUSTIFICATION

Pregnancy that goes beyond 42 weeks gestation or 294 days, by definition, is based on a 28 days menstrual cycle. Discrepancies in pregnancy dating are well known. Methods used to calculate due dates, including use of the LMP, conception date, ultrasound after 12 weeks gestation are all subjective. Research suggests that the only method of accurate pregnancy dating is an early ultrasound in the embryonic stage. Many midwifery clients do not obtain or wish for an early first trimester ultrasound.

There are many confounding factors that have an effect on the length of gestation for certain individuals. For example, ovulation is often delayed in breastfeeding individuals; pharmaceuticals being taken by individuals may impact hormonal function; people who practice extreme dieting, exercise or suffer from malnutrition often exhibit longer (or shorter) gestations and there is evidence to suggest that patients tend to follow previous pregnancy patterns and will carry pregnancies longer if they have done so in the past. Additionally, midwives understand the psycho-social condition of pregnancy may explain why some individuals may not be emotionally able to enter into labor if experiencing trauma or an unwillingness to experience birth.

Current research clearly demonstrates that although there is an increased risk of stillbirth as pregnancy progresses beyond 37 weeks gestation, there is no clear indication that medical management via induction methods reduces that risk when compared to expectant management for people who remain pregnant beyond 41 weeks. The increased risks of potentially unneeded medical intervention are well documented as significant hormonal "benefit" of entering into spontaneous labor rather than undergoing induction of labor.

Often, post dates pregnancy is incorrectly correlated with postmaturity syndrome, or an issue with placental sufficiency, which is not confined to infants with a gestation of more than 40 weeks. This distinction is critical as a pregnancy that is prolonged is markedly different than a pathological condition that is often unrelated to the gestational duration. Midwives are trained to identify risk factors for post date pregnancies which may be cause for concern and, in collaboration with a consulting physician, assess best plan for positive outcome. Additionally, mortality rates in postdate infants are often related to congenital malformations.

Moving "gestation beyond 42 weeks" to consultation allows the midwife to work collaboratively with the medical community and serve the midwifery client for the best possible outcomes. If the midwifery client is being monitored with expectant management including advanced ultrasound scans and non-stress tests, she may safely deliver at home or in a birth center if she so desires after a thorough informed consent process. Conversely, if medical management is determined to be a more appropriate approach to care, the client could still maintain collaborative care with her midwife and physician as well as return to the midwife for postpartum care following a hospital birth.

REFERENCE LIST

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Arizona Association of Midwives
 Legal and Regulatory Committee
 P.O. Box 80751
 Phoenix, AZ 85060

10 July 2015

Dr. Cara Christ, Director AzDHS
 Office of Administrative Council and Rules
 1740 W Adams #203
 Phoenix, AZ 85007

RECEIVED
 JUL 16 2015
 ARIZONA CONTROLLER'S OFFICE
 STATE RECEIPTS UNIT



Dr Christ:

The Arizona Association of Midwives (AAM) is submitting the attached Petition for a Rule to the Arizona Department of Health Services (AzDHS) as permitted in Arizona Revised Statutes § 41-1033 (Administrative Procedures Act). This is the **sixth** petition submitted thus far.

For years AzDHS has been aware of antiquated, burdensome and legally uncertain rules pertaining to midwifery practice and has failed to respond to midwives multiple informal requests to updates. AzDHS has cited the long standing governors' moratoriums on rulemaking as the rationale for taking no action to correct multiple errors within the rules that govern licensed midwives in Arizona. In addition, at the rules rewrite process that occurred in 2012 as a result of HB2247, the midwives submitted a report to AzDHS detailing the ways in which midwifery rules are problematic, a report which the department effectively ignored.

Within the most recent Governor's Order regarding the internal review of administrative rules, G.O. 2015-01 issued on January 5, 2015, the order clearly states that each state agency has the ability to request new rule making powers in order "to prevent a significant threat to the public health, peace or safety." Many of the problematic rules directly affect the health and safety of women and their newborns. AAM is therefore requesting that the Department exercise its ability to submit a request to the Office of the Governor in order to address the enclosed Petition for a Rule.

You may direct any questions, clarifications or responses to the AAM Legal and Regulatory Committee which is appointed by the AAM Board of Directors at the address listed above.

Sincerely,
 Legal and Regulatory Committee of AAM

Received

JUL 16 2015

Office of Special Licensing

Enclosure: Petition for a New Rule - Postpartum Hemorrhage greater than 500ml

CCd: Midwifery Advisory Committee % Carla Berg, Bureau Chief, Dept. of Special Licensing
 Arizona State Governor Doug Ducey
 Jeff Bloomberg, J.D., Manager Office of Administrative Council and Rules
 Arizona Association of Midwives Members

PROPOSED NEW RULE

A midwife may continue care for a midwifery client with a "postpartum hemorrhage of greater than 500 milliliters in the current pregnancy" as stated in R9-16-111 B 25 if the following criteria are met in the postpartum period:

- a. The hemorrhage responds to treatments available in the out of hospital setting and is well controlled
 - i. The client is alert and oriented
 - ii. The client is not experiencing syncope greater than one occurrence
 - iii. The client's blood pressure remains within normal limits of between 90/60 and 140/90;
or,
- b. The client has been discharged from physician care following a transfer of care for hemorrhage

JUSTIFICATION

Currently available prevention and treatment options for postpartum hemorrhage have been found to be effective at improving maternal outcomes. Midwives undergo rigorous training in assessing risk factors for postpartum hemorrhage. Midwives regularly implement prenatal care plans that reduce identified risks. Midwives in out of hospital birth practices do not provide care to clients with known risk factors for postpartum hemorrhage such as those with: multiple gestation, preeclampsia, chorioamnionitis, and polyhydramnios. Similarly, patients planning an out of hospital birth do not undergo interventional procedures known to increase rates of hemorrhage such as: medical labor augmentation, assisted delivery techniques (vacuum or forceps), and cesarean delivery. Postpartum hemorrhage affects 1-3% of postpartum patients. The most common cause of postpartum hemorrhage is uterine atony which respond well to current standards of practice for a licensed midwife.

There is no single accepted definition of postpartum hemorrhage in the United States. A blood loss of 500mL following vaginal birth and 1000mL following cesarean birth are commonly used for diagnosis even though current research suggests average blood loss may be greater. Visual estimation of blood loss is notoriously inaccurate, often over-estimating total blood loss, and has been found to be of little clinical use. It is important to note that a blood loss volume of 500mL is somewhat arbitrary and fails to take into consideration the individual's starting blood volume and may be irrelevant to the client's hemodynamic state. Likewise, a decrease in hematocrit levels by 10% has also been used for diagnosis, but similarly may not represent the current hematological state of the client and some individuals may suffer a postpartum hemorrhage with lower blood losses.

Two health and safety advantages of the proposed rule changes include: supporting continuity of care for the client and expanding the definition of postpartum hemorrhage to allow for assessment and treatment of signs and symptoms of postpartum hemorrhage rather than basing transfer of care upon an arbitrary and often inaccurate numerical estimated measurement. Midwives are trained and capable of assessing signs and symptoms that would indicate impending hypovolemic shock or a hemorrhage that is not responding well to treatment. Midwifery clients exhibiting concerning symptoms or presenting with a poorly controlled hemorrhage would appropriately be transferred to the hospital while those midwifery clients who have a postpartum hemorrhage greater than 500mL yet remain stable would be permitted to remain home under the care of their midwife.

Supporting continuity of care for clients through treatment of postpartum hemorrhage is of great value to the client, as continuity of care has been shown to decrease maternal morbidity and mortality. In a shared-care, midwife-led model, continuity of care is provided in a multidisciplinary network of consultation and referral with other care providers. In shared-care models, responsibility is shared between different healthcare professionals. Organizations worldwide and in the United States, such as the Homebirth Summit, have concentrated on shared care during a medical transport which recognizes that midwives have proven competency at medical assessment for conditions which would require a transfer of care or consultation. Once consulted or transferred, within a multidisciplinary network, the optimal care for the woman would be the ability to maintain continuity of care by her midwife. Therefore even if a transfer is necessitated for treatment of postpartum hemorrhage once the condition is resolved the client should be given the opportunity return to her midwife for postpartum care.

REFERENCE LIST

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Petition for a New Rule - Postpartum Hemorrhage greater than 500 ml
Submitted to Arizona Department of Health Services on 07/10/15
by The Legal and Regulatory Committee of the Arizona Association of Midwives
Page 3 of 3

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Arizona Association of Midwives
Legal and Regulatory Committee
PO Box 80751
Phoenix, AZ 85060

21 July 2015

Dr. Cara Christ, Director AzDHS
Office of Administrative Council and Rules
1740 W Adams #203
Phoenix, AZ 85007

A handwritten signature in black ink, appearing to be "AC", is written over the stamp.

AZHS CONTROLLER'S OFFICE
CASH RECEIPTS UNIT

JUL 21 2015
RECEIVED

Dr Christ:

The Arizona Association of Midwives (AAM) is submitting the attached Petition for a Rule to the Arizona Department of Health Services (AzDHS) as permitted in Arizona Revised Statutes § 41-1033 (Administrative Procedures Act). This is the **eighth** petition submitted thus far.

For years AzDHS has been aware of antiquated, burdensome and legally uncertain rules pertaining to midwifery practice and has failed to respond to midwives multiple informal requests to updates. AzDHS has cited the long standing governors' moratoriums on rulemaking as the rationale for taking no action to correct multiple errors within the rules that govern licensed midwives in Arizona. In addition, at the rules rewrite process that occurred in 2012 as a result of HB2247, the midwives submitted a report to AzDHS detailing the ways in which midwifery rules are problematic, a report which the department effectively ignored.

Within the most recent Governor's Order regarding the internal review of administrative rules, G.O. 2015-01 issued on January 5, 2015, the order clearly states that each state agency has the ability to request new rule making powers in order "to prevent a significant threat to the public health, peace or safety." Many of the problematic rules directly affect the health and safety of women and their newborns. AAM is therefore requesting that the Department exercise its ability to submit a request to the Office of the Governor in order to address the enclosed Petition for a Rule.

You may direct any questions, clarifications or responses to the AAM Legal and Regulatory Committee which is appointed by the AAM Board of Directors at the address listed above.

Sincerely,
Legal and Regulatory Committee of AAM

Enclosure: Petition for a Rule Change - Syphilis

CCd: Midwifery Advisory Committee % Carla Berg, Bureau Chief, Dept. of Special Licensing
Arizona State Governor Doug Ducey
Jeff Bloomberg, J.D., Manager Office of Administrative Council and Rules
Arizona Association of Midwives Members

Petition for a Rule Change- Syphilis

Submit to the Arizona Department of Health Services July 21, 2015

by The Arizona Association of Midwives Legal and Regulatory Committee

Page 1 of 1

CURRENT RULE

A.A.C. R9-16-111 Prohibited Practice; Transfer of Care

B. A midwife shall not accept for midwifery services or continue midwifery services for a client who develops any of the following:

10. Active b. Syphilis

PROPOSED RULE:

A.A.C. R9-16-112. Required Consultation

A. A midwife shall obtain a consultation at the time a client is determined to have any of the following during the current pregnancy:

26. A positive test result for: d. Syphilis;

JUSTIFICATION

- Midwifery scope of practice includes routinely assessing gestational age of the fetus.
- Effective treatment of syphilitic infection in women in less than 20 weeks gestation is achievable; Fetal ultrasonographic abnormalities and treatment failure are rare because the infection can only pass through a fully mature placenta.
- Effective treatment of syphilitic infection is monitored through screening and documentation of a four-fold decrease in titer reactivity. Lab results obtained from the infectious disease specialists may be assessed and addressed by the midwife in routine prenatal checkups. Thoughtful interpretation of results prevents the unnecessary transfer of VDRL positive mothers.
- Women at an increased risk for exposure- those with multiple sex partners, history of STIs, or living in a community with a high prevalence of syphilis- should be rescreened during the third trimester.
- If an especially large, thick, and pale placenta is observed postpartum (indicative of congenital syphilis) midwife will make referral to a pediatric provider skilled in infectious disease for full evaluation.
- Neonates born to women who have been effectively treated for syphilis during gestation will be referred to a pediatric provider skilled in infectious disease for full evaluation.

REFERENCE LIST

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FILED

AUG 12 2015



Arizona Association of Midwives
Legal and Regulatory Committee
PO Box 80751
Phoenix, AZ 85060

ADHS/Clerk of the Department
Administrative Counsel

10 August 2015

Dr. Cara Christ, Director AzDHS
Office of Administrative Council and Rules
1740 W Adams #203
Phoenix, AZ 85007

Dr. Christ:

The Arizona Association of Midwives (AAM) is submitting the attached Petition for a Review of an Agency Practice to the Arizona Department of Health Services (AzDHS) as permitted in Arizona Revised Statutes § 41-1033 (Administrative Procedures Act). This is the **seventh** petition submitted thus far.

In the past six months, AzDHS has interpreted Arizona Revised Statute Section 36-693 in a way that makes the practice of midwifery in Arizona nearly impossible. The interpretation that midwives are not permitted to take blood samples and that a licensed physician of medicine and surgery must take a blood sample for syphilis testing, is problematic both practically and legally. As a "licensed physician of medicine and surgery" is no longer a statutorily authorized license, midwives have no practical way to comply with this interpretation. Further, this interpretation was promulgated outside of the rulemaking process.

You may direct any questions, clarifications or responses to the AAM Legal and Regulatory Committee which is appointed by the AAM Board of Directors at the address listed above.

Sincerely,
Legal and Regulatory Committee of AAM

Enclosure: Review of Agency Practice- Syphilis Testing

CCd: Midwifery Advisory Committee % Carla Berg, Bureau Chief, Dept. of Special Licensing
Arizona State Governor Doug Ducey
Jeff Bloomberg, J.D., Manager Office of Administrative Council and Rules
Arizona Association of Midwives Members

Petition for a Review of Existing Agency Practice pursuant to Arizona Revised Statute
Section 41-1033

Submitted to the Arizona Department of Health Services 8/10/2014
by the Arizona Association of Midwives Legal and Regulatory Committee

REVIEW OF EXISTING AGENCY PRACTICE

This petition requests review of an existing agency practice that constitutes a rule. Specifically, the Department of Health has interpreted A.R.S. § 36-693 and developed a rule outside of the rulemaking process.

According to the midwifery rules "during the prenatal period, a midwife shall ... schedule or arrange the following tests for the client within 28 weeks gestation ... (f) Syphilis as required by § 36-693." R9-16-108(l)(1)(f).

On August 3, 2015, Thomas Salow the Branch Chief in the Department of Health Division of Licensing, announced a new agency interpretation of section 36-693. Mr. Salow testified that the agency has interpreted A.R.S. § 36-693 to mean that a midwife is a "person permitted by law to attend pregnant women but not permitted to take blood samples."

Specifically in 2015C-MDW-0244-DHS, at 52:00 minutes into the hearing, Mr. Salow and the defense attorney have the following exchange:

Attorney: Is it the departments position than that [the midwife] is "any other person permitted by law to attend pregnant women but not permitted to take blood."

Mr. Salow: Correct.

Further, on cross examination, Mr. Salow testified that, under the Department's interpretation of the statute, midwives are obligated "cause a sample of the blood of each pregnant woman attended by him to be taken under the direction of a duly licensed physician of medicine and surgery" because they are "not permitted to take blood."

The Department of Health has served at least two Notices to Assess Civil Penalties or Suspend Licenses based on this interpretation of the statute.

REQUEST TO REVIEW PRACTICE JUSTIFICATION

The assertion that a midwife is "not permitted to take blood samples" is a statement of general applicability that implements and interprets state statute. Further, that midwives have to "cause a sample of the blood of each pregnant woman attended by him to be taken under the direction of a duly licensed physician of medicine and

surgery” is a generally applicable interpretation of statute. Both of these interpretations were promulgated outside of both the Administrative Procedures Act and the exempt rulemaking pursuant to HB 2247.

This interpretation is problematic because midwives had no notice of this change in interpretation. In Arizona, there is no legislative framework or licensing system for taking blood samples or phlebotomy. Accordingly, any citizen is permitted to “take a blood sample.” Further, a “duly licensed physician of medicine and surgery” is no longer a license or title available to doctors in Arizona. According, no midwife can comply with the Department’s interpretation of the statute.

Last, the interpretation that a syphilis test is “required by § 36-693” is problematic in that the Department cannot constitutionally compel a pregnant woman to receive medical care against her will, nor can the Department threaten to withhold prenatal care if she does not consent. A.R.S. § 36-114.

The interpretation of § 36-693 was promulgated outside of the rulemaking process and purports to be applicable to all midwives. As such, the Arizona Association of Midwives asks Department to review its existing practice of fining midwives for violating its interpretation of the statute and engage in rulemaking surrounding the interpretation of § 36-693.

Ruthann Smejkal

From: Christopher Kleminich <Christopher.Kleminich@azdoa.gov>
Sent: Monday, May 02, 2016 7:56 AM
To: Ruthann Smejkal
Subject: FW: Contact Us - GRRC Website

Hi Ruthann,

Please see the below public comment we have received on two of the Department's rules. I imagine that this is related to the upcoming 5YRR on these rules.

Our office will file this comment and send it to the Council once the 5YRR is ready to be considered.

Thank you,

Chris Kleminich

Attorney

ADOA – Governor's Regulatory Review Council | State of Arizona

100 North 15th Avenue, Suite 402, Phoenix, AZ 85007

p: 602.542.2024 | christopher.kleminich@azdoa.gov

https://urldefense.proofpoint.com/v2/url?u=http-3A_grrc.az.gov&d=AwlGaQ&c=7xsdzXc1VkZyGw_71SwgiP92fiZryvVSehvDkp0td30&r=tp4EPcDJCET94sMAI1sAenxDwi_A60KL5pyC8kbXWKw&m=mJ6b2Rnz3AduVk5VtiWVaiJuk7fAQXN5TiORd2ERZLY&s=EA25mwPLQiw7-iATopvEDJNdglGac2BaKUPQijxREZ4&e=

How am I doing? Please take a moment to answer a few questions.

https://urldefense.proofpoint.com/v2/url?u=https-3A_www.surveymonkey.com_r_VOCDOGRRC&d=AwlGaQ&c=7xsdzXc1VkZyGw_71SwgiP92fiZryvVSehvDkp0td30&r=tp4EPcDJCET94sMAI1sAenxDwi_A60KL5pyC8kbXWKw&m=mJ6b2Rnz3AduVk5VtiWVaiJuk7fAQXN5TiORd2ERZLY&s=4dVqAYs702mPHsBETEM3GVvUB3xta8kK3kl6H3BIOTa&e=

-----Original Message-----

From: jessica.ross@azdoa.gov [mailto:jessica.ross@azdoa.gov] On Behalf Of Governor's Regulatory Review Council

Sent: Saturday, April 30, 2016 2:45 PM

To: Christopher Kleminich <Christopher.Kleminich@azdoa.gov>

Subject: Contact Us - GRRC Website

Submitted on Saturday, April 30, 2016 - 2:45pm Submitted by anonymous user: 72.208.214.127 Submitted values are:

Full Name: Lacey-smith-herron

Agency: For the az association of midwives

Email: giftedhandsla@gmail.com

Phone: 3105261410

Message:

R9-16-108-f scope of practice

R9-16-111 transfer of care

These need to be changed. As a woman who uses a midwife I chose her for her care and concern. When I chose my midwife she sent me to get all tests needed early and I was able to control my diabetes, find out I needed a cerclage and get extra perinatal office care because of my midwifes due diligence. She saved my daughter and made it possible for her to get here happy and healthy.

Because of these statutes and regulations when I developed preeclampsia and had to transfer service my midwife was now only able to be my doula and I lost my postpartum care . As a woman who is comfortable and happy with who I chose to help me bring my child into the world, who I trusted and due to the way other health care providers acted was one of the only people I trusted, I was no longer able to have that comfort , because of these rules. It is unfair and very upsetting because in my time of need when I needed my support system from my midwife(my choice and my comfortable place, and care provider) was now restricted from being there for me. Which leads to depression and worse postpartum depression because you feel like your voice has been taken from you. Give women their voice and freedom of choice to still continue care after the safe transfer and delivery has occurred. My midwife saved me and my daughters life and I will be forever grateful. GIVE THE MIDWIFE FREEDOM AND THE CLIENT A VOICE .

The results of this submission may be viewed at:

https://urldefense.proofpoint.com/v2/url?u=https-3A_grrc.az.gov_node_17_submission_143&d=AwlGaQ&c=7xsdzXc1VkZyGw_71SwgiP92fiZryvVSehvDkp0td30&r=tp4EPcDJCET94sMAI1sAenxDwi_A60KL5pyC8kbXWKw&m=mJ6b2Rnz3AduVk5VtiWVaiJuk7fAQXN5TiORd2ERZLY&s=U2wiOaIBocpQ_S-147LO-IT9mvl6O9SMH5D4QIYN6vA&e=



Public Health Licensing Services
Bureau of Special Licensing

150 N. 18th Avenue, Suite 410
Phoenix, Arizona 85007
(602) 364-0857

DOUGLAS A. DUCEY, GOVERNOR
CARA M. CHRIST MD, DIRECTOR

November 15, 2015

Dear Dr. Christ:

The Licensed Midwife Advisory Committee (Committee) would like to submit this inaugural report on midwifery and home births in the state of Arizona. In an advisory role to the Arizona Department of Health Services (Department), the Committee was established in July 2013 and consists of seven voting members and one ex-officio member. The Bureau of Special Licensing, within the Department, has provided facilitation and coordination of six Committee open meetings in 2015.

The fiscal year 2015 report includes the sections established in R9-16-117(E)(4), including recommendations for the Department in review of aggregate data from reports of midwifery services submitted by licensed midwives, evidence-based research pertaining to the practice of midwifery and recommendations for changes to the rules for licensing of midwifery. All recommendations provided in this report reflect views of Committee members for the Department's assessment.

The Committee appreciates the opportunity to submit this report for consideration by the Department.

Sincerely,

A handwritten signature in cursive script that reads "Carla Berg".

Carla Berg, MHS
Chief, Bureau of Special Licensing

Annual Report
Licensed Midwife Advisory Committee

July 2014 - June 2015



PHOTO CREDIT DIANA PETERSON, 2015

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Facts at a Glance

- 1,142 Deliveries; 11 VBAC, 3 Breech
- 73 Licensed Midwives (LM)
- 51 of LMs are Certified Professional Midwives
- 7 Initial Licenses Issued
- 25 Renewal Licenses Issued
- 2 Complaints filed regarding midwives' care or conduct
- 18 Enforcements Actions for reports submitted beyond 30 days (\$4320 fines)
- 4 Enforcement Actions for other scope of practice violations (\$150 fines)
- 1 License Suspension resulting in reinstatement with probationary restrictions
- 1 Notification of Fetal Demise

Introduction

Committee Structure and Meetings:

The Licensed Midwife Advisory Committee (LMAC or referred to as the Committee) was established under the Bureau of Special Licensing (referred to as the Bureau) as a part of rulemaking effective July 1, 2013 for advisory purposes to make recommendations to the Arizona Department of Health Services (referred to as the Department) addressing specific issues. LMAC appointments allow for members to have an opportunity to make a contribution by lending their experience and expertise. Committee members voluntarily serve and offer their time during their regular schedules.

Applications were accepted and appointments were made by the Director by August 30, 2013. The initial work of the Committee was to develop the informed consent for midwifery services according to R9-16-109 and assertion to decline required tests according to R9-16-110. These documents were developed by October 1, 2013 and are available for all licensed midwives to access on the Department's [Provider Information website](#).

In Fiscal Year 2015 (FY15), the Committee met six times. Meeting agenda, minutes and related presentations are available on the Department's [Committee website](#).

Committee Functions:

The functions of LMAC are defined by the Arizona Administrative Code Department of Health Services, Occupational Licensing, and Article 1 Licensing of Midwifery. A copy of the Arizona Revised Statutes Title 36, Article 7 for Licensing and Regulation of Midwifery and the Arizona Administrative Code Title 9, Chapter 16, Article 1 for Licensing of Midwifery are included in Appendix A. Specifically, R9-16-117 indicates the Midwifery Advisory Committee shall:

- Examine aggregate data from the midwife reports required in R9-16-114;
- Examine any notifications received by the Department required in R9-16-104(B);
- Examine evidence-based research pertaining to the practice of midwifery;
- Develop an annual report on midwifery and home births in this state during the previous fiscal year, including:
 - a. An analysis of the information from subsections (E)(1) and (2),
 - b. A summary of the information from subsection (E)(3), and
 - c. Recommendations for changes to the rules in this Article;
- Submit a copy of the report required in subsection (E)(4) to the Department on or before November 15 of each year, beginning in 2015;
- Assist in the development of the informed consent for midwifery services according to R9-16-109 by October 1, 2013; and
- Assist in the development of the assertion to decline required tests according to R9-16-110 by October 1, 2013.

Year in Review:

This Annual Report is the first opportunity for the Committee to provide an account of the information reviewed during the last year. Based on the rule requirements established for the Report, the Committee has identified goals to inform the Department and establish a baseline with data analysis and reevaluate these for future reports. In creating the document, the Committee completed a search of similar reports published in other states as well as international midwifery and homebirth reports.

The Committee would like to note certain limitations with the development of the Report. These include limitations in meeting availability for members to develop the report, resources, scope, and the data limitations noted in the Midwifery Report Review section. The Committee plans to improve on the report each year and will complete the FY2016 report by November 15, 2016.

Committee Members

Carol Denny, CPM, Licensed Midwife

Carol Denny has been a Licensed Midwife in the state of Arizona since 1997. She is a graduate of Ancient Art Midwifery Institute. She is the founder of Global Health Training, a non-profit organization devoted to teaching healthcare with the purpose of improving maternal and neonatal outcomes. She has traveled to Mexico, Honduras, Haiti, Uganda, and India.

Paula Matthews, CPM, Licensed Midwife

Paula Matthews is a homebirth midwife serving Yavapai County. Paula has been a Licensed Midwife in the state of Arizona since 1982.

Jude Melton, CPM, Licensed Midwife

Jude Melton is a homebirth midwife in Mesa, Arizona. Jude received her midwifery training from Maternidad La Luz, a free-standing birth center in El Paso Texas. She successfully completed the advanced three year program in 2003 and became an Arizona Licensed Midwife in October 2004. Jude is the owner and primary midwife at Sunrise Midwifery. Jude is active in the midwifery community and enjoys serving women who choose alternative birthing options including homebirth.

Jenny Schultz, MPA, CPM, Licensed Midwife

Jenny Schultz is a native of Arizona, committed to families throughout the Valley, and believes in the empowerment and safety of homebirths for low-risk women, newborns and their families. She completed her studies at the Midwives College of Utah, and has been working directly in providing midwifery care since 2010. Jenny also has a Masters in Public Administration from Arizona State University.

Elizabeth Morton, MSW, Member of the Public

Elizabeth Morton is a native of Phoenix, AZ. Elizabeth is the mother of 3, 1 born via cesarean and 2 born with the care of homebirth midwives. Elizabeth has a background in social services, family welfare, and has a Masters of Social Work from Arizona State University. Elizabeth is an active volunteer for International Cesarean Awareness Network of Phoenix and Babywearing International of Phoenix.

Francisco Garcia, MD, MPH, Physician - OB/GYN

Dr. Francisco Garcia is the Director and Chief Medical Officer of the Pima County Department of Health in Tucson, Arizona. He is a fellow of the American Congress of Obstetricians and Gynecologists and a diplomat of the American Board of Obstetrics and Gynecology. Dr. Garcia is also the Distinguished Outreach Professor of Public Health at the University of Arizona. Dr. Garcia is a member of the U.S. Preventive Services Task Force which produces national evidence-based clinical guidelines, as well as the Institute of Medicine Roundtable on Health Equity and the Elimination of Health Disparities. Prior to joining Pima County Department of Health, Dr. Garcia served in a variety of roles at the University of Arizona including director of the Arizona Center of Excellence in Women's Health, the Arizona Hispanic Center of Excellence, and the Cancer Disparities Institute of the Arizona Cancer Center. He retains an academic title as the Distinguished Outreach Professor of Public Health.

Roy Teramoto, MD, MPH, Ex-Officio

Roy Teramoto is a pediatrician who retired from the U.S. Public Health Service after a thirty year career with the Indian Health Service. He served as a pediatrician at the Phoenix Indian Medical Center and later as the Maternal Child Health consultant for the Phoenix Area. He continues to work part time for the Phoenix Area Indian Health Service. He is a member of the American Academy of Pediatrics and the Arizona Chapter of the American Academy of Pediatrics and is a member of the American Public Health Association.

Members who also contributed to this Report as members during the year include Mary Henderson (Licensed Midwife) and Jeanne Stagner (Certified Nurse Midwife).

Midwife Report Review

Data Sources and Limitations

The data source used in this report includes electronic reports submitted to the Department by licensed midwives in fiscal year 2015 (July 1, 2014 – June 30, 2015). The report is a requirement for licensed midwives under A.A.C. R9-16-114(B) within 30 calendar days after the termination of midwifery services to the client. Midwives must complete the midwifery report for each client that includes the variables identified in A.A.C. R9-16-114(A). This analysis and report includes midwife reports based on the date the midwife submitted the report.

From July 1, 2014 to December 14, 2014, the format provided by the Department for the required reporting was via a SurveyMonkey® report. From December 15, 2014 to June 30, 2015, the format changed to a Department Midwife Reporting Portal. All data from the SurveyMonkey® reports were imported into the Portal when the transition to the Portal occurred. Therefore, data analysis was completed using Portal data extracts. Data elements are reported by the midwife. Variables such as Apgar score are both designated and reported by the midwife.

Table 1: Overview of Reports and Licensed Midwives

Reported Variable	July 1, 2014 – June 30, 2015
Number of Licensed Midwives (LM)	73
Number of Certified Professional Midwives (CPM)	51
Number of Initial Licenses Issued	7
Number of Renewal Licenses Issued	25
Number of Licensed Midwives submitting at least 1 report	53
Total number of reports submitted	1,399
Total number of deliveries reported	1,142 (82%)

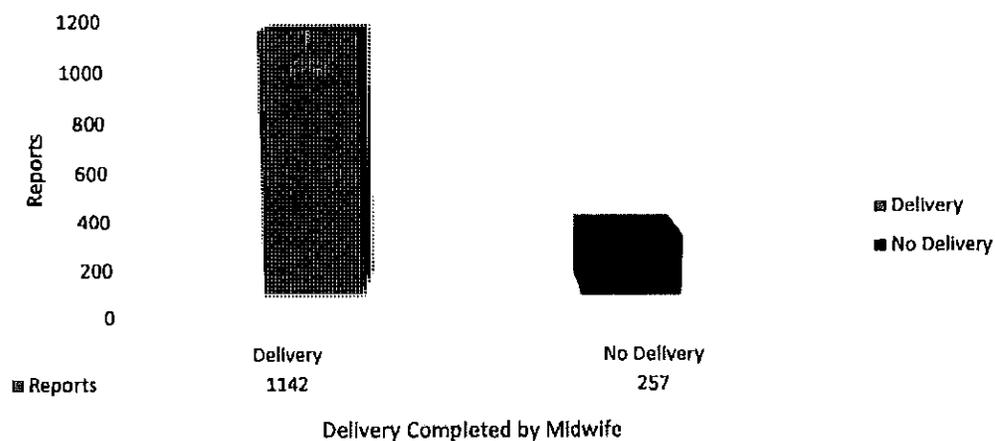
Table 2: Client Report Identified Vaginal Birth after Cesarean or Complete/Frank Breech

Delivery Type	Reports	Transfer of Care	Outcome
VBAC	11	No	Normal/No Complications
Complete / Frank Breech	3	No	Normal/No Complications

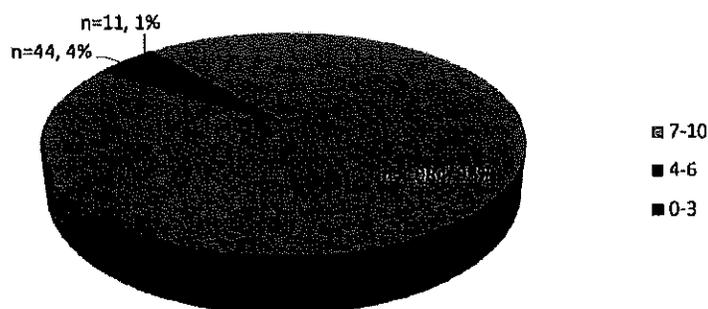
Table 3: Gravida and Para Reported by Midwife n=1,398 for Gravida, n=1,399 for Para

	Mean	Minimum	Maximum
Gravida	3.01	1	16
Para	1.59	0	13

Figure 1: Delivery Completed by Midwife



**Figure 2: Apgar at 1minute Reported by Midwives who Completed Delivery
n=1,139**



**Figure 3: Apgar at 5 minutes Reported by Midwives who Completed Delivery
n=1,139**

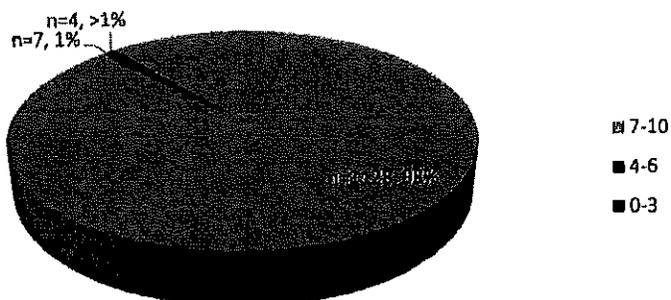


Table 4: Newborn Weight at Birth Reported by Midwife
n=1,084

Infant Weight	Mean (g)	Minimum (g)	Maximum (g)
	3579	2183	5380

Figure 4: Weight for Gestational Age Reported by Midwife
n=1,139

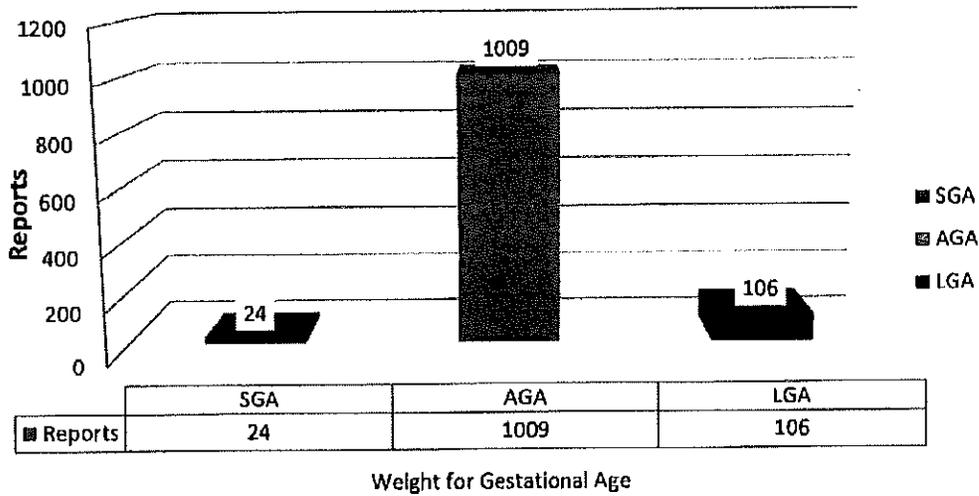


Figure 5: Infant Outcome by Gestational Age Designation Reported by Midwife
n=1,086

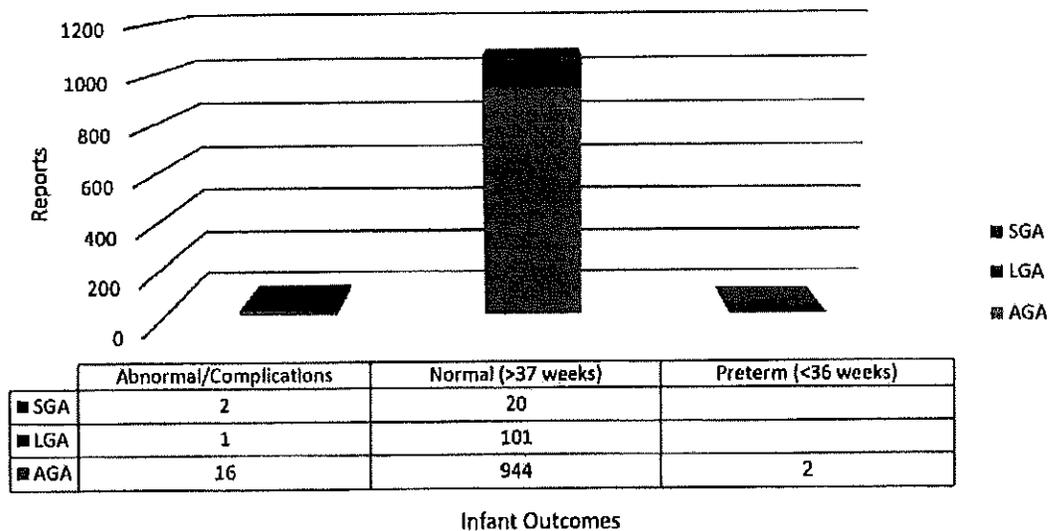


Table 5: Newborn Head Circumference and Length at Birth Reported by Midwife
n=1,142

	Mean (cm)	Minimum (cm)	Maximum (cm)
Length	51.7	33.0	59.0
Head Circumference	34.6	5.6	39.6

Figure 6: Transfer of Care Reported by Midwife

Per R9-16-102, "Transfer of care" means that a midwife refers the care of the client or newborn to an emergency medical services provider, a certified nurse midwife, a hospital, or a physician who then assumes responsibility for the direct care of the client or newborn.
n=1,397

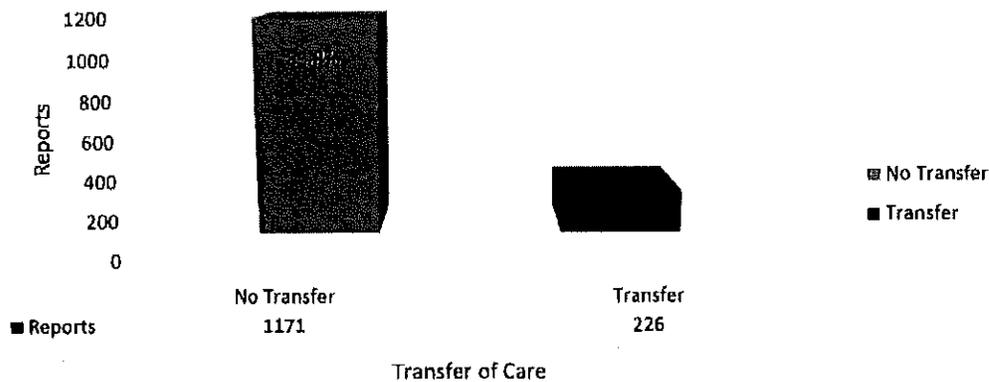
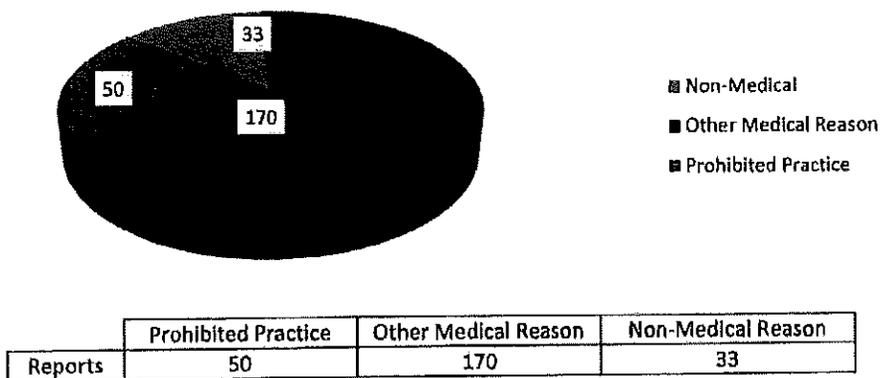


Figure 7: Reason for Transfer of Care Reported by Midwife

253 reasons noted for the 226 Yes responses to Transfer of Care as multiple responses allowed.



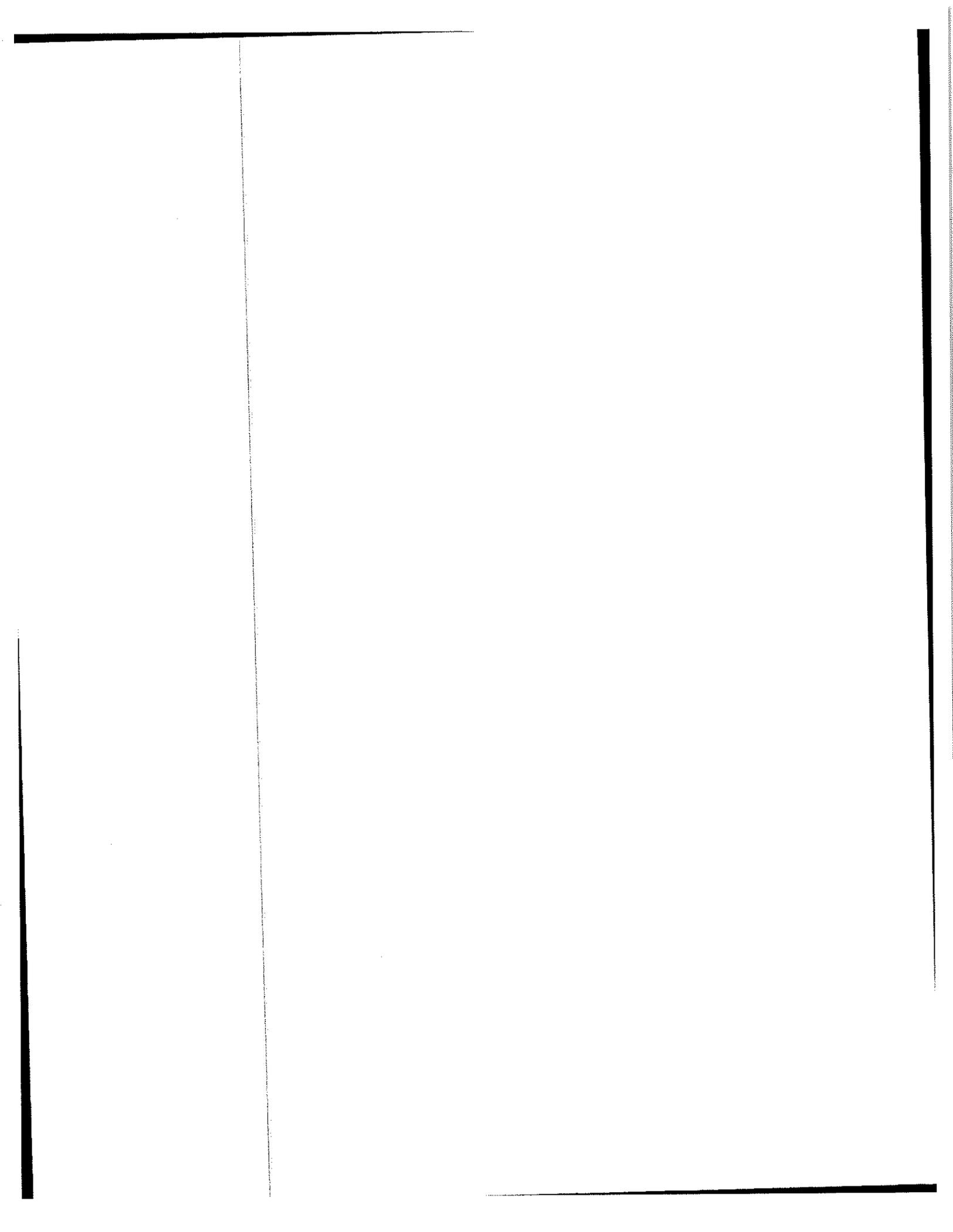


Figure 8: Transport Destination

For reports where a Transfer of Care was reported, the options for the Transport Destination include hospital, physician's office, certified nurse midwife or emergency medical services.

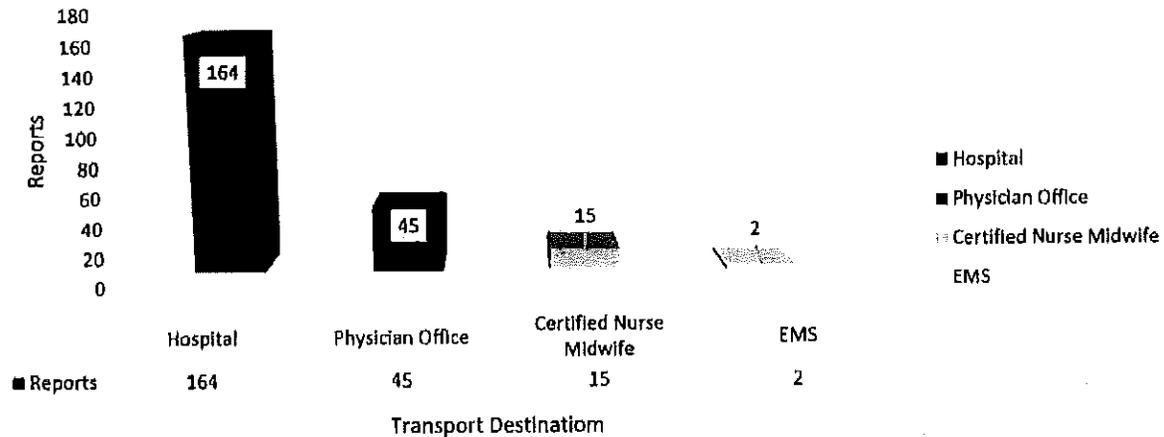


Table 6: Prohibited Practice Detail

	Reports
Gestation beyond 42 weeks	11
Labor beginning before the beginning of 36 weeks gestation	7
A postpartum hemorrhage of greater than 500 milliliters in the current pregnancy	6
Abnormal fetal heart rate consistently less than 120 beats per minute or more than 160 beats per minute	5
Multiple Fetuses	3
Preeclampsia or eclampsia	3
Breech does not meet requirements for home birth	3
A progression of labor that does not meet the requirement of R9-16-108(J)(4), if applicable	3
A non-bleeding placenta retained more than 60 minutes	2
Respiratory distress	2
A blood pressure of 140/190 or an increase of 30 millimeters of Mercury systolic or 15 millimeters of Mercury diastolic over client's lowest baseline blood pressure for two consecutive readings taken at least six hours apart	2
Placenta Previa or placenta Accreta	1
Uncontrolled gestational diabetic, insulin-dependent diabetes, hypertension, Rh disease with positive titers, active tuberculosis, or active syphilis	1
Presence of ruptured membrane without onset of labor within 24 hours	1
Total	50



Data Limitations

Limitations of this data include incorrect data entry and data missing across certain fields. These limitations are more evident for reports submitted via the Survey Monkey as data validation was not available but was later included for reports submitted via the Portal.

In November 2014, licensed midwives were notified of reports not previously submitted and were provided with a timeframe of December 31, 2014 to submit these reports. The data include reports received by the Department in FY2015 where services were provided in 2013. For example, 293 of the reports where a delivery was reported by the licensed midwife include a delivery date in calendar year 2013.

Demise Notifications

One notification received by the Department, as required in R9-16-104(B), was reviewed by the Committee. The report was for a stillborn infant delivered by a Licensed Midwife. The Committee plans to develop a standard form and procedure for review of any future notifications received by the Department.

Complaints & Enforcement Actions

Source of Complaint	Complaints	Outcome
Consumers	2	1 complaint did not meet criteria for investigation 1 complaint resulted in enforcement action

Source of Violation	Violations	Outcome
Midwife Report	21	Enforcement Action
Complaint	1	Enforcement Action

Enforcement Violations	Violations	Action
Midwife report submitted beyond 30 days	18	\$4320 collected in fines
Failure to obtain consultation for parity greater than 5	2	\$50 fine
Accepting a client with a history of prior cesarean section (violation occurred prior to July 1, 2013).	1	\$100 fine
A suspected postpartum hemorrhage of greater than 500 milliliters in the current pregnancy	1	6 month license suspension 40 hours continuing education 2 years probation

Data Limitations

The Bureau was unable to provide data on how many midwife patient records were requested or viewed. This data is reflective of final enforcement dates during FY2015 and does include violations that occurred prior to July 1, 2014. Enforcement action records can be found at <http://hsapps.azdhs.gov/ls/sod/SearchProv.aspx?type=MW>

Consumer Voice

Arizona has a strong tradition of good outcomes and responsible practices among its Licensed Midwives (LMs). This is evident in the increasing number of consumers seeking to birth at home or at a birth center under the care of Arizona LMs, low incidence of scope of practice violations, and even lower incidence of consumer complaints filed against LMs. Since July 2013, when the new scope took effect, consumers looked forward to seeing positive changes that would result in an environment of appropriate licensing oversight, departmental transparency, midwife support, and an even greater focus on safety of mothers and infants. This would allow consumers to make an educated decision when seeking a care provider for an out-of-hospital birth.

While consumers have experienced a positive increase in their care provider options with the LM scope inclusion of VBAC and breech pregnancies, consumers do have a few concerns. These concerns include access to their private medical records, mandatory prenatal screenings and vaginal exams, the narrow parameters of midwifery services as defined by rule, and loss of postpartum care due to transfer.

Consumers have serious concerns about their private medical information being reviewed without any indication of risk to mother or infant warranting such investigation. When pressed for this information to be included in this report, the Bureau was unable to provide data on how many records had been requested or reviewed, or why the records were requested. Consumers see this as a violation of HIPPA and Arizona statute. Consumers would like to see transparency regarding requests and reviews of private medical records.

Consumers feel coerced to consent to mandatory prenatal screenings and vaginal exams. These feelings of coercion are especially strong when it comes to consenting to vaginal exams. Vaginal exams are an invasive and unreliable indicator of labor progression. Consumers would like to see the department address this area of scope and allow for consumers to decline unnecessary screenings and exams.

Consumers are most concerned about the complete loss of postpartum care, or the precarious challenge of securing postpartum care, following a transfer of care. Transfers of care, for emergency and non-emergency needs, often results in consumers being released from the hospital with instructions to resume care with their midwife but, due to current interpretations of scope, midwives are being instructed not to resume care following such transfers of care. Postpartum visits are part of the standard of care, and are important for establishing breastfeeding, screening for postpartum depression, and monitoring the health of the mother for potential complications. By making postpartum care more difficult to obtain, or withdrawing care altogether, these new rules and their current interpretation present a real risk to the health and safety of mothers and infants.

Consumers want continuity of care addressed to help ensure mothers and infants do not find themselves without postpartum care or care erroneously limited to 6 weeks. Consumers want the definition of "midwifery services" to fully encompass a midwife's ability to meet the needs of consumers beyond the current definition's narrow prenatal and postpartum parameters. Doing so increases safety to mothers and infants.

The LMAC Member of the Public gathered these consumer concerns from groups and individuals through the Rights for Homebirth Facebook group and direct communication.

Scope Recommendations

The AZDHS Licensed Midwife Advisory Committee recommends the following rule changes to the current AZDHS Midwifery Rules and Regulations.

As stated by the Clinical Practice Guidelines for Midwifery and Women's Health, Midwifery is a discipline that melds science with art; it is a humanistic approach to providing quality health care to women and newborns and their families (Thrope et. al., 2014). The Committee believes in the value of formal education, lifelong learning and the development and application of evidenced based care for competent midwifery practice. With these recommendations, the goal of these recommendations is to provide a brief but succinct referenced synthesis of current midwifery practice. And in doing so, provide these proposed rule changes, to ensure the AZDHS reviews and determines the need for rule changes to comply with current evidence based standards and health care policy.

The Committee received written proposals presented by the Arizona Association of Midwives. The Committee reviewed these and, in consensus, presents three of these proposals in this report as recommendations to the Department. These recommendations were created in partnership with the AZ Association of Midwives. Each proposed rule change is listed along with current reference for justification of the proposed rule changes.

Recommendation for Rule Change: Definition of Midwifery Services

CURRENT RULE A.A.C. R9-16-101(30)

“Midwifery services” means health care, provided by a midwife to a mother, related to pregnancy, labor, delivery, and postpartum care.

PROPOSED RULE CHANGE:

“Midwifery services” defined as health care, provided by a midwife, related to pregnancy, labor, delivery, and postpartum care. This care includes preconception counseling, well-woman care, preventative care, the promotion of normal birth, the detection of complications in pregnancy and the newborn, the accessing of medical care or other appropriate assistance and the carrying out of emergency measures.

JUSTIFICATION

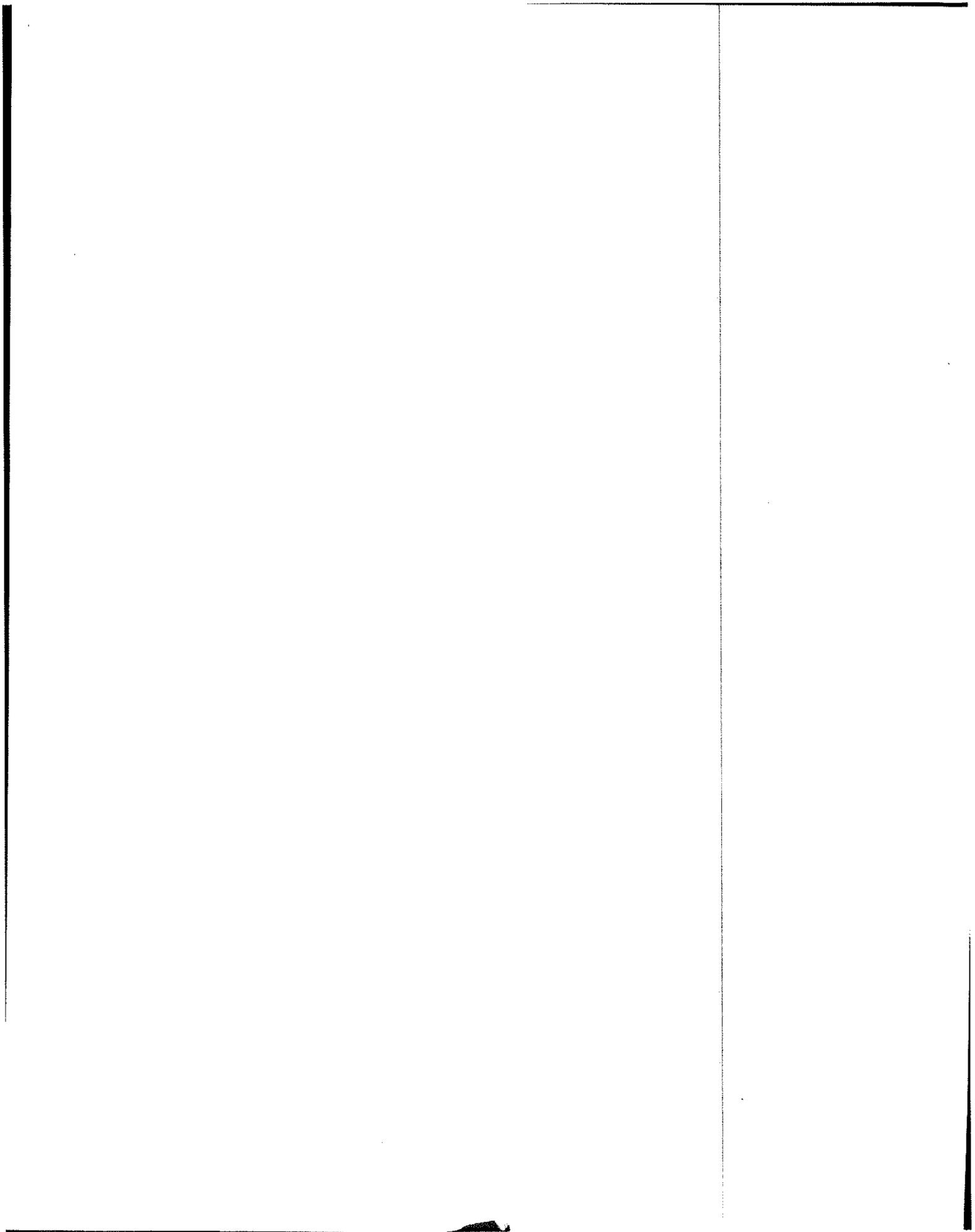
Midwifery practice as stated in the official policy statement from the Association of Women’s Health, Obstetric and Neonatal Nurses (AWHONN) is the “...independent management of women’s healthcare, focusing on pregnancy, childbirth, the postpartum period, care of the newborn and the family planning and gynecological care. The core of midwifery practice contains health promotion, management of normal birth, assessment and detection of complications, and referral as needed,” (AWHONN, 2015).

The certified and licensed midwife in Arizona has demonstrated competency via a national certification and state exam. Licensed midwives historically and currently work in partnership with women to give the necessary support, clinical care and recommendations pertaining to health promotion, reproductive health and wellness, care of the newborn and the carrying out of emergency measures if needed. Arizona enacted regulations for licensed midwives in the 1970s and should continue to be a state considering evidence based regulation of certified midwives. National and international standards for education, training, competency and credentialing of midwives include the expanded definition of midwifery services as outlined above. Midwives are recognized as experts in normal birth and wellness care globally and are held to a set of professional standards and ethics that require the midwife to consult or refer to another healthcare provider when the needs for care exceed the competency of the midwife (AWHONN, 2015).

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Essential competencies for basic midwifery practice. Accessed online 05/16/15 at <http://www.internationalmidwives.org/assets/uploads/documents/CoreDocuments/ICM%20Essential%20Competencies%20for%20Basic%20Midwifery%20Practice%202010,%20revised%202013.pdf> --- (2014).

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Medical Board of California. (2014). *Practice Guidelines for California Licensed Midwives*. Accessed online 05/16/15 at http://www.mbc.ca.gov/Licenses/Midwives/midwives_practice_guidelines.pdf.

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State of Vermont. (2015). *The Vermont Statutes Online. Title 26: Professions And Occupations. Chapter 85: Midwives* . Accessed online 05/16/15 at <http://legislature.vermont.gov/statutes/fullchapter/26/085>

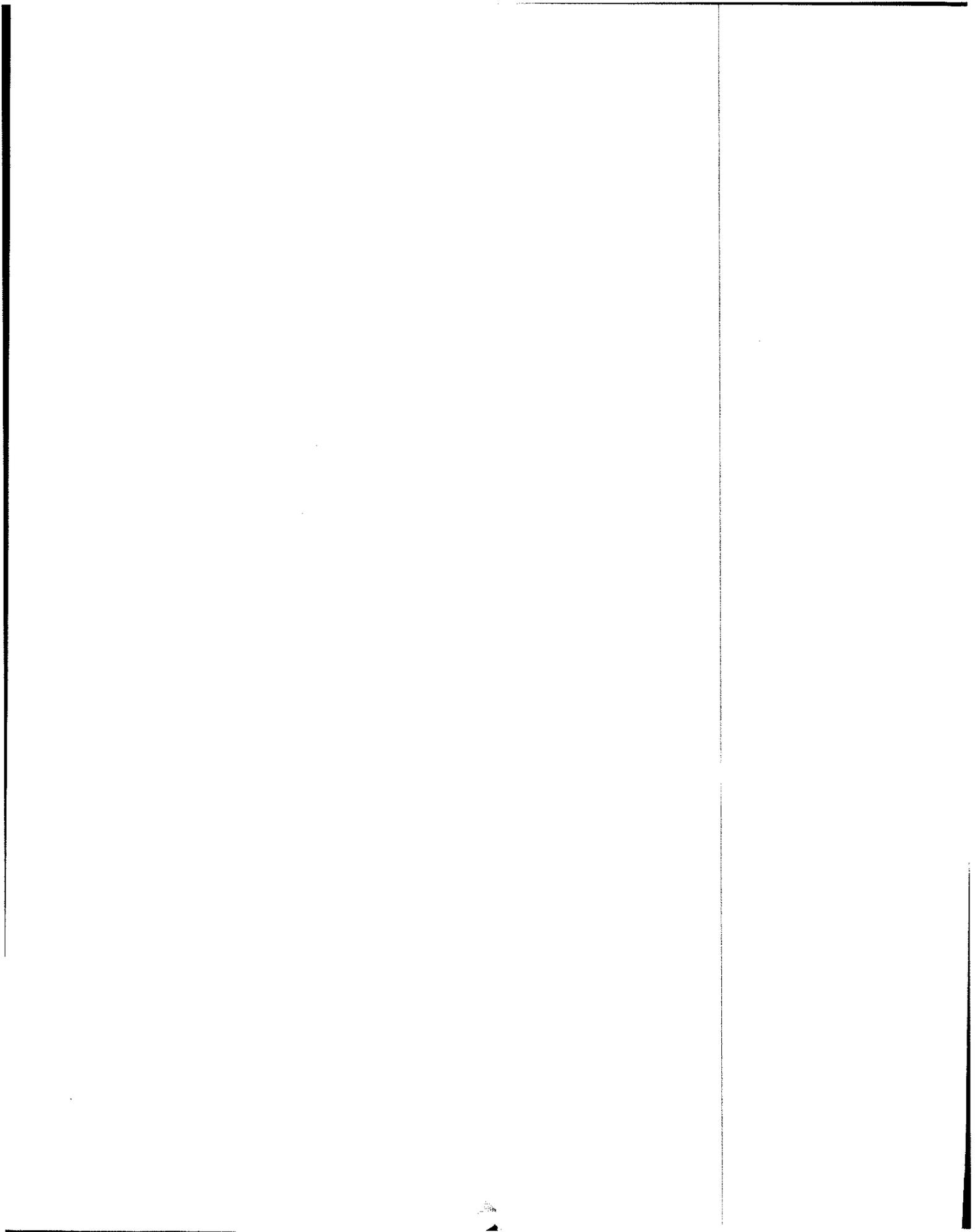
Recommendation for Rule Change: Continuity of Care

CURRENT RULE A.A.C. R9-16-111(B)

PROPOSED RULE CHANGE:

A midwife shall not knowingly accept for midwifery services or continue midwifery services without documentation of condition treated and resolved, following which midwifery services may resume; for a client who has or develops any of the following:

1. A previous surgery that involved:
 - a. An incision in the uterus, except as provided in R9-16-108(B)(1); or
 - b. A previous uterine surgery that enters the myometrium;
2. Multiple fetuses
3. Placenta previa or placenta accreta;
4. A history of severe postpartum bleeding, of unknown cause, which required transfusion;
5. Deep vein thrombosis or pulmonary embolism;
6. Uncontrolled gestational diabetes;
7. Insulin-dependent diabetes;
8. Hypertension;
9. Rh disease with positive titers;
10. Active:
 - a. Tuberculosis;
 - b. Syphilis;
 - c. Genital herpes at the onset of labor;
 - d. Hepatitis until treated and recovered, following which midwifery services may resume; or
 - e. Gonorrhea until treated and recovered, following which midwifery services may resume;
11. Preeclampsia or eclampsia persisting after the second trimester;
12. A blood pressure of 140/90 or an increase of 30 millimeters of Mercury systolic or 15 millimeters of Mercury diastolic over the client's lowest baseline blood pressure for two consecutive readings taken at least six hours apart;
13. A persistent hemoglobin level below 10 grams or a persistent hematocrit below 30 during the third trimester;
14. A pelvis that will not safely allow a baby to pass through during labor;
15. A serious mental illness;
16. Evidence of substance abuse, including six months prior to pregnancy, to one of the following, evident during an assessment of a client;
 - a. Alcohol
 - b. Narcotics
 - c. Other drugs
17. Except as provided in R9-16-108(B)(2), a fetus with an abnormal presentation;
18. Labor beginning before the beginning of 36 weeks gestation;
19. A progression of labor that does not meet the requirements of R9-16-108(J)(4), if applicable;
20. Gestational age greater than 34 weeks with no prior prenatal care;
21. A gestation beyond 42 weeks;
22. Presence of ruptured membranes without onset of labor within 24 hours;



23. Abnormal fetal heart rate consistently less than 120 beats per minute or more than 160 beats per minute;
24. Presence of thick meconium, blood-stained amniotic fluid, or abnormal fetal heart tones;
25. A postpartum hemorrhage of greater than 500 milliliters in the current pregnancy; or 52. A non-bleeding placenta retained for more than 60 minutes

JUSTIFICATION - Midwife led continuity of care is provided in a multidisciplinary network of consultation and referral with other care providers. This contrasts with medical- models of care where an obstetrician or family physician is primarily responsible for care (Cochrane.org). A shared-care model, is one in which responsibility is shared between different healthcare professionals to provide optimal outcomes for mother and baby.

Organizations worldwide and in the United States, such as the Homebirth Summit, have concentrated on shared care in the midwifery led model of care and most specifically during a medical transport. This design recognizes that midwives have proven competency in medical assessment for conditions which would require a transfer of care or consultation. Once consulted or transferred the optimal care for the woman would be the ability to maintain continuity of care by her midwife once the condition necessitating transfer of care or consultation is resolved.

The midwifery prohibited practice section states that “[a] midwife shall not accept for midwifery services or continue midwifery services for a client who has or develops any of the following and lists twenty-six different health conditions. (A.A.C. R9-16-111(B)).

Historically, this provision was interpreted by the Department to allow a midwife to resume care once the health condition had been treated or ceased to exist. After the revision of the Midwifery rules, the Department has taken action against midwives and had opined in a training session that this “Prohibited Practice” section does not allow a midwife to resume care.

This new position is problematic.

First, interpreting the rules in this way arbitrarily excludes healthy, low-risk women from midwifery services. Many of the health conditions within section 111(B) are not permanent conditions and can be resolved. By interpreting these rules to not allow midwives to resume care, the Department is excluding healthy women from the care providers of their choice.

Second, this interpretation is not consistent with the plain language of the rules. When the Department revisited the midwifery rules in 2013, the Department chose to use the words “has or develops.” The Department chose to use these words in the present perfect tense, indicating that a midwife cannot accept or continue care when a client presently has one of the twenty-six different conditions. Therefore, the logical leap that the Department has made is that this section also prohibits care when a client has had any of these conditions.

Third, midwives are mandated in A.A.C. R9-108-K to provide postpartum care for the mother and the newborn. The interpretation of this rule offered by the Department to immediately terminate all midwifery services when the midwifery client experiences any of the conditions within 111(B) ignores that there are two people the midwife is legally tasked with caring for in the days following birth.

Last, as currently interpreted, these rules do not provide guidance on a midwife's responsibilities in the event that her patient does not consent to a transfer of care. Both the Arizona Supreme Court and the United States Supreme Court have held that patients have a right to refuse medical treatment, even when that treatment is lifesaving. (*Cruzan v. Director, Missouri Department of Health*, 497 U.S. 261, 277 (1990); *Rasmussen by Mitchell v. Fleming*, 154 Ariz. 207, 215, 741 P.2d 674, 682 (1987)).

The Department has been aware for years the way in which the current rules are interpreted place the midwife in an impossible situation if her client exercises her constitutionally protected right to decline treatment: the midwife must choose between keeping her license and her ethical responsibility to not abandon her patient. This rule change would provide the midwife with the guidance she needs while still protecting public health and safety.

R9-16-101. 30 Definition of 'midwifery services' : " Midwifery services" means health care, provided by a midwife to a mother, related to pregnancy, labor, delivery or postpartum care.

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Recommendation for Rule Change: Care for the Woman with Postpartum Hemorrhage

CURRENT RULE A.A.C. R9-16-111(B)(25)

PROPOSED RULE CHANGE:

A midwife may continue care for a midwifery client with a postpartum hemorrhage in the current pregnancy as stated in R9-16-111 (B) (25) if all of the following criteria are met in the postpartum period:

- 1 The hemorrhage responds to treatments available in the out of hospital setting and is well controlled
 - a The client is alert and oriented
 - b The client's blood pressure remains within normal limits of between 90/60 and 140/90
- 2 The client has been discharged from physician care following a transfer of care for hemorrhage

JUSTIFICATION

Currently available prevention and treatment options for postpartum hemorrhage have been found to be effective at improving maternal outcomes (Barbieri, 2007).

Midwives undergo rigorous training in assessing risk factors for postpartum hemorrhage (CMQCC Hemorrhage Task Force, 2010).

Midwives regularly implement prenatal care plans that reduce identified risks. Under current guidelines, rules and regulations, Arizona Midwives in out of hospital birth practices do not provide care to clients with known risk factors for postpartum hemorrhage such as those with: multiple gestation, preeclampsia, chorioamnionitis, and polyhydramnios. Similarly, patients planning an out of hospital birth do not undergo procedures known to increase rates of hemorrhage such as: medical labor augmentation, assisted delivery techniques (vacuum or forceps), and cesarean delivery. Postpartum hemorrhage is regularly defined as a blood loss of greater than 500 mL; it affects 1-3% of postpartum patients (Gregory, Main & Lyndon, 2009). The most common cause of postpartum hemorrhage is uterine atony, a situation of which responds well to current standards of practice for a licensed midwife (McCormick, Sanghvi, & McIntosh, 2002).

There is no single accepted definition of postpartum hemorrhage in the United States. A blood loss of 500mL following vaginal birth and 1000mL following cesarean birth are commonly used for diagnosis even though current research suggests average blood loss may be greater (Beer, Duvvi, 2005).

Visual estimation of blood loss can be inaccurate, often over-estimating total blood loss, and has been found to be of little clinical use. It is important to note that a blood loss volume of 500mL is somewhat arbitrary and fails to take into consideration the individual's starting blood volume and may be irrelevant to the client's hemodynamic state. Likewise, a decrease in hematocrit levels by 10% has also been used for diagnosis, but similarly may not represent the current hematological state of the client and some individuals may suffer effects of a postpartum hemorrhage with lower blood losses.

Two health and safety advantages of the proposed rule changes include: supporting continuity of care for the client and expanding the definition of postpartum hemorrhage to allow for assessment and treatment of signs and symptoms of postpartum hemorrhage rather than basing transfer of care upon an arbitrary and often inaccurate numerical estimated measurement. Midwives are trained and capable of assessing signs and symptoms that would indicate impending hypovolemic shock or a hemorrhage that is not responding well to treatment. Midwifery clients exhibiting concerning symptoms or presenting with a poorly controlled hemorrhage would appropriately be transferred to the hospital while those midwifery clients who have a postpartum blood loss greater than an estimated 500mL yet remain stable would be permitted to remain home under the care of their midwife.

Supporting continuity of care for clients through treatment of postpartum hemorrhage is of great value to the client, as continuity of care has been shown to decrease maternal morbidity and mortality. In a shared-care, midwife-led model, continuity of care is provided in a multidisciplinary network of consultation and referral with other care providers. In shared-care models, responsibility is shared between different healthcare professionals. Organizations worldwide and in the United States, such as the Homebirth Summit, have concentrated on shared care during a medical transport, which recognizes that midwives have proven competency at medical assessment for conditions, which would require a transfer of care or consultation. Once consulted or transferred the optimal care for the woman would be the ability to maintain continuity of care by her midwife.

Therefore even if a transfer is necessitated for treatment of postpartum hemorrhage once the condition is resolved the client should be given the opportunity return to her midwife for postpartum care (Home Birth Summit, 2014).

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Appendix

Arizona Licensing of Midwifery Program Governing Documents

Midwives in the State of Arizona are authorized by Arizona Revised Statutes 36-751-760 et seq. and Arizona Administrative Code R9-16-191 et seq.

Arizona Revised Statutes (A.R.S.)

The Arizona Revised Statutes (A.R.S.) represent the statutory laws of the state of Arizona. The A.R.S. and the Arizona Administrative Code (A.A.C.) Licensing of Midwifery (Rules) each contain requirements applicable to the Arizona Bureau of Special Licensing. Accordingly, to fully understand all the requirements applicable to the Arizona Licensing of Midwifery, the A.R.S. and the Arizona Midwifery Rules should be read in conjunction with each other.

A.R.S. Title 36

CHAPTER	Licensing and Regulation of Midwifery
<u>36-751</u>	Definitions
<u>36-752</u>	Licensure; exceptions
<u>36-753</u>	Application for license as midwife
<u>36-754</u>	Licensing of midwives; renewal of license
<u>36-755</u>	Powers and duties of the director
<u>36-756</u>	Grounds for denial of license and disciplinary action; hearing; appeal; civil penalties; injunctions
<u>36-756.01</u>	Investigations; right to examine evidence; subpoenas; confidentiality
<u>36-757</u>	Violations; classification
<u>36-758</u>	Fees
<u>36-759</u>	Use of title; prohibitions
<u>36-760</u>	Persons and acts not affected by this article

Arizona Licensing of Midwifery Administrative Code (Rules)

A.A.C R9-16-191 et seq.

Evidence Based Research

*The following publications have not been reviewed and verified by the Department.

Intrapartum care for healthy women and babies. NICE guidelines [CG190] Published date: December 2014
<https://www.nice.org.uk/guidance/cg190>

Intrapartum care: care of healthy women and their babies during childbirth. NICE guidelines [CG190] Published date: December 2014 <http://www.nice.org.uk/guidance/cg190/evidence>

Midwifery: Evidence-Based Practice A Summary of Research on Midwifery Practice in the United States American College of Nurse-Midwives. Revised April 2012

<http://www.midwife.org/acnm/files/cclibraryfiles/filename/000000002128/midwifery%20evidence-based%20practice%20issue%20brief%20finalmay%202012.pdf>

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Medical Board of California (2015) *California Licensed Midwife Annual Report Summary, Report Year 2014*. http://www.mbc.ca.gov/Licensees/Midwives/midwives_2014_annual_report.pdf

Office of Direct-Entry Midwifery Registration (2012) *Colorado Midwifery Registration 2012 Statistical Summary*. https://drive.google.com/file/d/0B-K5DhxXxJZbdG1rR0FoUXNyYTO/view?usp=drive_web

Definitions

Arizona Association of Midwives (AAM): a professional organization with a mission to advance the quality and accessibility of midwifery in Arizona.

Committee on Legal and Regulatory Concerns (CLaRC): a committee within AAM, whose purpose is to address legal concerns for AAM midwives and to take actions to encourage improved midwifery regulatory climate in Arizona.

Department: The Arizona Department of Health Services

Bureau: The Bureau of Special Licensing within Public Health Licensing Services, a division of the Arizona Department of Health Services

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Department of Health Services – Occupational Licensing
TITLE 9. HEALTH SERVICES
CHAPTER 16. DEPARTMENT OF HEALTH SERVICES
OCCUPATIONAL LICENSING

ARTICLE 1. LICENSING OF MIDWIFERY

Article 1, consisting of Sections R9-16-101 through R9-16-112 and Exhibits A through E, adopted effective as noted in Section Historical Notes (Supp. 94-1).

Section

R9-16-101.	Definitions
R9-16-102.	Application for Initial Licensure
R9-16-103.	Renewal
Exhibit B.	Repealed
Exhibit C.	Repealed
R9-16-104.	Administration
R9-16-105.	Continuing Education
Exhibit D.	Repealed
R9-16-105.01.	Repealed
Table 1.	Repealed
R9-16-106.	Name Change; Duplicate License
R9-16-107.	Time-frames
Table 1.1.	Time-frames (in calendar days)
Exhibit E.	Repealed
R9-16-108.	Responsibilities of a Midwife; Scope of Practice
R9-16-109.	Informed Consent for Midwifery Services
R9-16-110.	Assertion to Decline Required Tests
R9-16-111.	Prohibited Practice; Transfer of Care
R9-16-112.	Required Consultation
R9-16-113.	Emergency Measures
R9-16-114.	Midwife Report after Termination of Midwifery Services
R9-16-115.	Client and Newborn Records
R9-16-116.	Denial, Suspension, or Revocation of License; Civil Penalties; Procedures
R9-16-117.	Midwifery Advisory Committee

R9-16-101. Definitions

In addition to the definitions in A.R.S. § 36-751, the following definitions apply in this Article unless otherwise specified:

1. “Abnormal presentation” means the fetus is not in a head-down position with the crown of the head being the leading body part.
2. “Addiction” means a condition that results when a person ingests a substance that becomes compulsive and interferes with ordinary life responsibilities, such as work, relationships, or health.
3. “Amniotic” means the fluid surrounding the fetus while in the mother’s uterus.
4. “Apgar score” means the number indicating a newborn’s physical condition attained by rating selected body functions.
5. “Aseptic” means free of germs.
6. “Breech” means a complete breech, a frank breech, or an incomplete breech.
7. “Certified nurse midwife” means an individual who meets the criteria in 4 A.A.C. 19, Article 5 and is certified by the Arizona State Board of Nursing.
8. “Complete breech” means that at the time of birth the buttocks of a fetus is pointing downward with both legs folded at the knees and the feet near the buttocks.
9. “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, statewide furlough day, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, statewide furlough day, or legal holiday.
10. “Cervix” means the narrow lower end of the uterus which protrudes into the cavity of the vagina.
11. “Consultation” means communication between a midwife and a physician or a midwife and a certified nurse midwife for the purpose of receiving a written or verbal recommendation and implementing prospective advice regarding the care of a pregnant woman or the woman’s child.
12. “Current photograph” means an image of an individual, taken no more than 60 calendar days before the submission of the individual’s application, in a Department-approved electronic format capable of producing an image that:
 - a. Has a resolution of at least 600 x 600 pixels but not more than 1200 x 1200 pixels;
 - b. Is 2 inches by 2 inches in size;
 - c. Is in natural color;
 - d. Is a front view of the individual’s full face, without a hat or headgear that obscures the hair or hairline;

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- e. Has a plain white or off-white background; and
- f. Has between 1 and 1 3/8 inches from the bottom of the chin to the top of the head.
- 13. “Dilation” means opening of the cervix during the mechanism of labor to allow for passage of the fetus.
- 14. “Effacement” means the gradual thinning of the cervix during the mechanism of labor and indicates progress in labor.
- 15. “Emergency care plan” means the arrangements established by a midwife for a client’s transfer of care in a situation in which the health or safety of the client or newborn are determined to be at risk.
- 16. “Emergency medical services provider” has the same meaning as in A.R.S. § 36-2201.
- 17. “Episiotomy” means the cutting of the perineum, center, middle, or midline, in order to enlarge the vaginal opening for delivery.
- 18. “Fetus” means a child in utero from conception to birth.
- 19. “Frank breech” means that at the time of birth the buttocks of a fetus is pointing downward with both legs folded flat up against the head.
- 20. “Gestation” means the length of time from conception to birth, as calculated from the first day of the last normal menstrual period.
- 21. “Gravida” means the number of times the mother has been pregnant, including a current pregnancy, regardless of whether these pregnancies were carried to term.
- 22. “Incomplete breech” means that at the time of birth the buttocks of a fetus is pointing downward with one leg folded at the knee with the foot near the buttocks.
- 23. “Infant” has the same meaning as in A.R.S. § 36-694.
- 24. “Informed consent” means a document signed by a client, as provided in R9-16-109, agreeing to the provision of midwifery services.
- 25. “Intrapartum” means occurring from the onset of labor until after the delivery of the placenta.
- 26. “Jurisprudence test” means an assessment of an individual’s knowledge of the:
 - a. Laws of this state concerning the reporting of births, prenatal blood tests, and newborn screening; and
 - b. Rules pertaining to the practice of midwifery.
- 27. “Ketones” means certain harmful chemical elements which are present in the body in excessive amounts when there is a compromised bodily function.
- 28. “Local registrar” means a person appointed by the state's registrar of vital statistics for a registration district whose duty includes receipt of birth and death certificates for births and deaths occurring within that district for review, registration, and transmittal to the state office of vital records according to A.R.S. Title 36, Chapter 3.
- 29. “Meconium” means the first bowel movement of the newborn, which is greenish black in color and tarry in consistency.
- 30. “Midwifery services” means health care, provided by a midwife to a mother, related to pregnancy, labor, delivery or postpartum care.
- 31. “Newborn” has the same meaning as in A.R.S. § 36-694.
- 32. “Para” means the number of births that are greater than 20 weeks of gestation, including viable and non-viable births, where multiples are counted as one birth.
- 33. “Parity” means the number of newborns a woman has delivered.
- 34. “Perineum” means the muscular region in the female between the vaginal opening and the anus.
- 35. “Physician” means an allopathic, an osteopathic, or a naturopathic practitioner licensed according to A.R.S. Title 32, Chapters 13, 14, or 17.
- 36. “Postpartum” means the six-week period following delivery of a newborn and placenta.
- 37. “Prenatal” means the period from conception to the onset of labor and birth.
- 38. “Prenatal care” means the on-going risk assessments, clinical examinations, and prenatal, nutritional, and anticipatory guidance offered to a pregnant woman.
- 39. “Prenatal visit” means each clinical examination of a pregnant woman for the purpose of monitoring the course of gestation and the overall health of the woman.
- 40. “Primigravida” means a woman who is pregnant for the first time.
- 41. “Primipara” means a woman who has given birth to her first newborn.
- 42. “Quickening” means the first perceptible movement of the fetus in the uterus, occurring usually in the 16th to the 20th week of gestation.
- 43. “Rh” means a blood antigen.
- 44. “Serious mental illness” means a condition in an individual who is 18 years of age or older and who exhibits emotional or behavioral functioning, as a result of a mental disorder as defined in A.R.S. § 36-501, that:
 - a. Is severe and persistent, resulting in a long-term limitation of their functional capacities for primary activities of daily living such as interpersonal relationships, homemaking, self-care, employment and recreation; and
 - b. Impairs or substantially interferes with the capacity of the individual to remain in the community without supportive treatment or services of a long-term or indefinite duration.
- 45. “Substance abuse” means the continued use of alcohol or other drugs in spite of negative consequences.
- 46. “Shoulder dystocia” means the shoulders of the fetus are wedged in the mother's pelvis in such a way that the fetus is unable to be born without emergency action.
- 47. “Transfer of care” means that a midwife refers the care of a client or newborn to an emergency medical services provider, a certified nurse midwife, a hospital, or a physician who then assumes responsibility for the direct care of the client or newborn.

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

Historical Note

Section repealed, new Section adopted effective March 14, 1994 (Supp. 94-1). Section amended by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

R9-16-102. Application for Initial Licensure

- A.** An applicant for an initial license to practice midwifery shall submit:
1. An application in a format provided by the Department that contains:
 - a. The applicant's name, address, telephone number, and e-mail address;
 - b. The applicant's Social Security Number, as required under A.R.S. §§ 25-320 and 25-502;
 - c. Whether the applicant has ever been convicted of a felony or a misdemeanor in this or another state or jurisdiction;
 - d. If the applicant was convicted of a felony or misdemeanor:
 - i. The date of the conviction,
 - ii. The state or jurisdiction of the conviction,
 - iii. An explanation of the crime of which the applicant was convicted, and
 - iv. The disposition of the case;
 - e. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-16-107(C)(2);
 - f. An attestation that information required as part of the application has been submitted and is true and accurate; and
 - g. The applicant's signature and date of signature;
 2. A copy of the applicant's:
 - a. U.S. passport, current or expired;
 - b. Birth certificate;
 - c. Naturalization documents; or
 - d. Documentation of legal resident alien status;
 3. Documentation that demonstrates the applicant is 21 years of age or older if the documentation submitted in subsection (A)(2) does not demonstrate that the applicant is 21 years of age or older;
 4. Current documentation of completion of training in:
 - a. Adult basic cardiopulmonary resuscitation through a course recognized by the American Heart Association, and
 - b. Neonatal resuscitation through a course recognized by the American Academy of Pediatrics or American Heart Association;
 5. Documentation of a high school diploma, a high school equivalency diploma, an associate degree, or a higher degree;
 6. Documentation that the applicant is certified by the North American Registry of Midwives as a Certified Professional Midwife;
 7. A current photograph of the applicant;
 8. A non-refundable application fee of \$25; and
 9. A non-refundable testing fee of \$100 for a jurisprudence test administered by the Department.
- B.** The Department shall review an application for an initial license to practice midwifery according to R9-16-107 and Table 1.1.
- C.** If an applicant receives notification of eligibility to take the jurisprudence test, the applicant:
1. Shall take the jurisprudence test administered by the Department,
 2. Shall provide proof of identity by a government-issued photographic identification card upon the request of the individual administering the jurisprudence test,
 3. May take the jurisprudence test as many times as desired without paying an additional testing fee, and
 4. Shall score 80% or higher correct answers on the jurisprudence test to be eligible to receive an initial license to practice midwifery.
- D.** If an applicant scores 80% or higher correct answers on the jurisprudence test, the Department shall provide written notice to the applicant, within five working days after the date of the jurisprudence test, to submit to the Department:
1. A licensing fee of \$25; and
 2. The documentation required in subsection (A)(4) or (6), if the training required in subsection(A)(4) or certification required in subsection (A)(6) is not current.
- E.** The Department shall issue an initial license to practice midwifery within five working days after receiving the applicable documentation and licensing fee required in subsection (D).
- F.** The Department shall provide to an applicant a written notice of denial that complies with A.R.S. § 41-1092.03(A) and inform the applicant that the applicant may reapply under subsection (A) if the applicant does not:
1. Score 80% or higher correct answers on the jurisprudence test within 180 calendar days after the date of the notification of eligibility to take the jurisprudence test, or
 2. Submit to the Department the applicable documentation and licensing fee required in subsection (D) within 120 calendar days after the date of the notification in subsection (D).

Historical Note

Section repealed, new Section adopted effective March 14, 1994 (Supp. 94-1). Amended by final rulemaking at 8 A.A.R. 2896, effective June 18, 2002 (Supp. 02-2). Section R9-16-102 repealed; new Section R9-16-102 renumbered from R9-16-103 and amended by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

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Exhibit A. Repealed

Historical Note

Section repealed, new Section adopted effective March 14, 1994 (Supp. 94-1). Exhibit A repealed by final rulemaking at 8 A.A.R. 2896, effective June 18, 2002 (Supp. 02-2).

R9-16-103. Renewal

- A.** At least 30 calendar days and no more than 60 calendar days before the expiration date of a midwifery license, a midwife shall submit to the Department:
1. An application for renewal of a midwifery license in a format provided by the Department, that contains:
 - a. The midwife's name, address, telephone number, and e-mail address;
 - b. The midwife's license number;
 - c. Whether the midwife has been convicted of a felony or a misdemeanor in this or another state or jurisdiction in the previous two years;
 - d. If the midwife was convicted of a felony or misdemeanor:
 - i. The date of the conviction,
 - ii. The state or jurisdiction of the conviction,
 - iii. An explanation of the crime of which the midwife was convicted, and
 - iv. The disposition of the case;
 - e. Whether the midwife agrees to allow the Department to submit supplemental requests for information under R9-16-107(C)(2);
 - f. An attestation that the midwife has completed the continuing education requirement in R9-16-105;
 - g. An attestation that the midwife is complying with the requirements in A.R.S. § 32-3211;
 - h. An attestation that information required as part of the application has been submitted and is true and accurate; and
 - i. The midwife's signature and date of signature;
 2. Either:
 - a. Documentation that the midwife is currently certified by the North American Registry of Midwives as a Certified Professional Midwife; or
 - b. For a midwife who has been continuously licensed as a midwife by the Department since 1999, a copy of both sides of documentation showing the completion of current training in:
 - i. Adult basic cardiopulmonary resuscitation that meets the requirements in R9-16-102(A)(4)(a), and
 - ii. Neonatal resuscitation that meets the requirements in R9-16-102(A)(4)(b); and
 3. A non-refundable renewal fee of \$25.
- B.** The Department shall review an application for renewal of a license to practice midwifery according to R9-16-107 and Table 1.

Historical Note

Adopted effective March 14, 1994 (Supp. 94-1). Section R9-16-103 renumbered to R9-16-102; new Section R9-16-103 made by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

EXHIBIT B. Repealed

Historical Note

Adopted effective March 14, 1994 (Supp. 94-1). Exhibit B repealed by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

EXHIBIT C. Repealed

Historical Note

Adopted effective March 14, 1994 (Supp. 94-1). Exhibit C repealed by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

R9-16-104. Administration

- A.** A midwife may submit a written request for the Department to:
1. Add the midwife's name, address, and telephone number to a list of licensed midwives on the Department's website; or
 2. Remove the midwife's name, address, and telephone number from a list of licensed midwives on the Department's website.
- B.** A midwife shall:
1. Notify the Department in a format provided by the Department within five working days after:
 - a. A client has died while under the midwife's care,
 - b. A stillborn child has been delivered by the midwife, or
 - c. A newborn delivered by the midwife has died within the first 6 weeks after birth; and
 2. Provide a summary of the:
 - a. Circumstances leading up to the event, and
 - b. Actions taken by the midwife in response to the event.
- C.** A midwife shall:

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1. Maintain documentation of:
 - a. Completion of current training in:
 - i. Adult basic cardiopulmonary resuscitation that meets the requirements in R9-16-102(A)(4)(a), and
 - ii. Neonatal resuscitation that meets the requirements in R9-16-102(A)(4)(b);
 - b. Except as provided in R9-16-103(A)(2)(b), current certification as a Certified Professional Midwife by the North American Registry of Midwives; and
 - c. The continuing education required in subsection R9-16-105 for at least the previous three years; and
2. Provide a copy of documentation required in subsection (C)(1) to the Department within 2 working days after the Department's request.

Historical Note

Adopted effective March 14, 1994 (Supp. 94-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

R9-16-105. Continuing Education

During the term of a midwifery license, the midwife shall obtain at least 20 continuing education units that:

1. Improve the midwife's ability to:
 - a. Provide services within the midwife's scope of practice,
 - b. Recognize and respond to situations outside the midwife's scope of practice, or
 - c. Provide guidance to other services a client may need; and
2. Have been approved as applicable to the practice of midwifery by the:
 - a. American Nurses Association,
 - b. American Congress of Obstetrics and Gynecologists,
 - c. Midwives Alliance of North America,
 - d. Arizona Medical Association,
 - e. American College of Nurse Midwives,
 - f. Midwifery Education Accreditation Council, or
 - g. Another health professional organization.

Historical Note

Adopted effective March 14, 1994, except for subsections (B)(3) and (C) which are effective September 15, 1994 (Supp. 94-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

Exhibit D. Repealed

Historical Note

Adopted effective March 14, 1994 (Supp. 94-1). Exhibit D repealed by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

R9-16-105.01. Repealed

Historical Note

New Section made by final rulemaking at 8 A.A.R. 2896, effective June 18, 2002 (Supp. 02-2). Section repealed by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

Table 1. Repealed

Historical Note

Table 1 made by final rulemaking at 8 A.A.R. 2896, effective June 18, 2002 (Supp. 02-2). Table 1 repealed by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

R9-16-106. Name Change; Duplicate License

- A. To request a name change on a midwifery license or a duplicate midwifery license, a midwife shall submit in writing to the Department:
 1. The midwife's name on the current midwifery license;
 2. If applicable, the midwife's new name;
 3. The midwife's address, license number, and e-mail address;
 4. As applicable:
 - a. Documentation supporting the midwife's name change, or
 - b. A statement that the midwife is requesting a duplicate midwifery license; and
 5. A non-refundable fee of \$10.00.
- B. Upon receipt of the written request required in subsection (A), the Department shall issue, as applicable:
 1. An amended midwifery license that incorporates the name change but retains the expiration date of the midwifery license, or
 2. A duplicate midwifery license.

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Historical Note

Adopted effective March 14, 1994 (Supp. 94-1). Section R9-16-106 renumbered to R9-16-108; new Section R9-16-106 made by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

R9-16-107. Time-frames

- A.** The overall time-frame described in A.R.S. § 41-1072(2) for each type of license granted by the Department is specified in Table 1.1. The applicant or midwife and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame. The substantive review time-frame and the overall time-frame may not be extended by more than 25 percent of the overall time-frame.
- B.** The administrative completeness review time-frame described in A.R.S. § 41-1072(1) for each type of license granted by the Department is specified in Table 1.1.
 - 1. The administrative completeness review time-frame begins:
 - a. For an applicant submitting an application for initial licensure, when the Department receives the application packet required in R9-16-102(A); and
 - b. For a licensed midwife applying to renew a midwifery license, when the Department receives the application packet required in R9-16-103(A).
 - 2. If an application is incomplete, the Department shall provide a notice of deficiencies to the applicant or midwife describing the missing documentation or incomplete information. The administrative completeness review time-frame and the overall time-frame are suspended from the date of the notice until the date the Department receives the documentation or information listed in the notice of deficiencies. An applicant or midwife shall submit to the Department the documentation or information listed in the notice of deficiencies within the time specified in Table 1.1 for responding to a notice of deficiencies.
 - 3. If the applicant or midwife submits the documentation or information listed in the notice of deficiencies within the time specified in Table 1.1, the Department shall provide a written notice of administrative completeness to the applicant or midwife.
 - 4. If the applicant or midwife does not submit the documentation or information listed in the notice of deficiencies within the time specified in Table 1.1, the Department shall consider the application withdrawn.
 - 5. When an application is complete the Department shall provide a notice of administrative completeness to the applicant or midwife.
 - 6. If the Department issues a notice of eligibility to take the jurisprudence test or a license during the administrative completeness review time-frame, the Department shall not issue a separate written notice of administrative completeness.
- C.** The substantive review time-frame described in A.R.S. § 41-1072(3) is specified in Table 1.1 and begins on the date of the notice of administrative completeness.
 - 1. If an application complies with the requirements in this Article and A.R.S. Title 36, Chapter 6, Article 7, the Department shall issue a notice of eligibility to take the jurisprudence test to an applicant or a license to a midwife.
 - 2. If an application does not comply with the requirements in this Article or A.R.S. Title 36, Chapter 6, Article 7, the Department shall make one comprehensive written request for additional information, unless the applicant or midwife has agreed in writing to allow the Department to submit supplemental requests for information. The substantive review time-frame and the overall time-frame are suspended from the date that the Department sends a comprehensive written request for additional information or a supplemental request for information until the date that the Department receives all of the information requested.
 - 3. An applicant or midwife shall submit to the Department all of the information requested in a comprehensive written request for additional information or a supplemental request for information within the time specified in Table 1.1.
 - 4. If the applicant or midwife does not submit the additional information within the time specified in Table 1.1 or the additional information submitted by the applicant or midwife does not demonstrate compliance with this Article and A.R.S. Title 36, Chapter 6, Article 7, the Department shall provide to the applicant a written notice of denial that complies with A.R.S. § 41-1092.03(A).
 - 5. If the applicant or midwife submits the additional information within the time specified in Table 1.1 and the additional information submitted by the applicant or midwife demonstrates compliance with this Article and A.R.S. Title 36, Chapter 6, Article 7, the Department shall issue a notice of eligibility to take the jurisprudence test to an applicant or a license to a midwife.

Historical Note

Adopted effective March 14, 1994 (Supp. 94-1). Section R9-16-107 renumbered to R9-16-115; new Section R9-16-107 made by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

Table 1.1. Time-frames (in calendar days)

Type of Approval	Statutory Authority	Overall Time-Frame	Administrative Completeness Review Time-Frame	Time to Respond to Notice of Deficiency	Substantive Review Time-Frame	Time to Respond to Comprehensive Written Request
Eligibility for Jurisprudence Test (R9-16-102)	A.R.S. §§ 36-753, 36-754, and 36-755	30	15	60	15	30

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Midwifery License Renewal (R9-16-103)	A.R.S. 36-754	§ 30	15	30	15	15
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Historical Note

Table 1.1 made by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

Exhibit E. Repealed

Historical Note

Adopted effective March 14, 1994 (Supp. 94-1). Amended to correct printing errors (Supp. 99-4). Exhibit E repealed by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

R9-16-108. Responsibilities of a Midwife; Scope of Practice

- A.** A midwife shall provide midwifery services only to a healthy woman, determined through a physical assessment and review of the woman’s obstetrical history, whose expected outcome of pregnancy is most likely to be the delivery of a healthy newborn and an intact placenta.
- B.** Except as provided in R9-16-111(C) or (D), a midwife who is certified by the North American Registry of Midwives as a Certified Professional Midwife may accept a client for a vaginal delivery:
 - 1. After prior Cesarean section, or
 - 2. Of a fetus in a complete breech or frank breech presentation.
- C.** Before providing services to a client, a midwife shall:
 - 1. Inform a client, both orally and in writing, of:
 - a. The midwife's scope of practice, educational background, and credentials;
 - b. If applicable to the client’s condition, the midwife’s experience with:
 - i. Vaginal birth after prior Cesarean section delivery, or
 - ii. Delivery of a fetus in a complete breech or frank breech presentation;
 - c. The potential risks; adverse outcomes; neonatal or maternal complications, including death; and alternatives associated with an at-home delivery specific to the client’s condition, including the conditions described in subsection (C)(1)(b);
 - d. The requirement for tests specified in subsections (I) and (K)(4)(c), and the potential risks for declining a test, and, if a test is declined, the need for a written assertion of a client’s decision to decline testing;
 - e. The requirement for consultation for a condition specified in R9-16-112; and
 - f. The requirement for the transfer of care for a condition specified in R9-16-111; and
 - 2. Obtain a written informed consent for midwifery services according to R9-16-109.
- D.** A midwife shall establish an emergency care plan for the client that includes:
 - 1. The name, address, and phone number of:
 - a. The hospital closest to the birthing location that provides obstetrical services, and
 - b. An emergency medical services provider that provides service between the birthing location and the hospital identified in subsection (D)(1)(a);
 - 2. The hospital identified in subsection (D)(1)(a) is within 25 miles of the birthing location for a delivery identified in subsection (B);
 - 3. The signature of the client and the date signed; and
 - 4. The signature of the midwife and the date signed.
- E.** A midwife shall ensure the client receives a copy of the emergency care plan required in subsection (D).
- F.** A midwife shall implement the emergency care plan by immediately calling the emergency medical services provider identified in subsection (D)(1)(b) for any condition that threatens the life of the client or the client’s child.
- G.** A midwife shall maintain all instruments used for delivery in an aseptic manner and other birthing equipment and supplies in clean and good condition.
- H.** A midwife shall assess a client's physical condition in order to establish the client's continuing eligibility to receive midwifery services.
- I.** During the prenatal period, the midwife shall:
 - 1. Until October 1, 2013, schedule or arrange for the following tests for the client within 28 weeks gestation:
 - a. Blood type, including ABO and Rh, with antibody screen;
 - b. Urinalysis;
 - c. HIV;
 - d. Hepatitis B;
 - e. Hepatitis C;
 - f. Syphilis as required in A.R.S. § 36-693;
 - g. Rubella titer;

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- h. Chlamydia; and
 - i. Gonorrhea;
 - 2. Until October 1, 2013, schedule or arrange for the following tests for the client:
 - a. A blood glucose screening test for diabetes completed between 24 and 28 weeks of gestation;
 - b. A hematocrit and hemoglobin or complete blood count test completed between 28 and 36 weeks of gestation;
 - c. A vaginal-rectal swab for Group B Strep Streptococcus culture completed between 35 and 37 weeks of gestation;
 - d. At least one ultrasound and recommended follow-up testing to determine placental location and risk for placenta previa and placenta accrete; and
 - e. An ultrasound at 36-37 weeks gestation to confirm fetal presentation and estimated fetal weight for a breech pregnancy;
 - 3. As of October 1, 2013, except as provided in R9-16-110, ensure that the tests in section (I)(1) are completed by the client within 28 weeks gestation;
 - 4. As of October 1, 2013, except as provided in R9-16-110, ensure that the tests in subsection (I)(2) are completed by the client;
 - 5. Conduct a prenatal visit at least once every 4 weeks until the beginning of 28 weeks of gestation, once every 2 weeks from the beginning of 28 weeks until the end of 36 weeks of gestation, and once a week after 36 weeks of gestation that includes:
 - a. Taking the client's weight, urinalysis for protein, nitrites, glucose and ketones; blood pressure; and assessment of the lower extremities for swelling;
 - b. Measurement of the fundal height and listening for fetal heart tones and, later in the pregnancy, feeling the abdomen to determine the position of the fetus;
 - c. Documentation of fetal movement beginning at 28 weeks of gestation;
 - d. Document of:
 - i. The occurrence of bleeding or invasive uterine procedures, and
 - ii. Any medications taken during the pregnancy that are specific to the needs of an Rh negative client;
 - e. Referral of a client for lab tests or other assessments, if applicable, based upon examination or history; and
 - f. Recommendation of administration of the drug RhoGam to unsensitized Rh negative mothers after 28 weeks, or any time bleeding or invasive uterine procedures are done, or midwife administration of RhoGam under a physician's written orders;
 - 6. Monitor fetal heart tones with fetoscope and document the client's report of first quickening, between 18 and 20 weeks of gestation;
 - 7. Conduct weekly visits until signs of first quickening have occurred if first quickening has not been reported by 20 weeks of gestation;
 - 8. Initiate a consultation if first quickening has not occurred by the end of 22 weeks of gestation; and
 - 9. Conduct a prenatal visit of the birthing location before the end of 35 weeks of gestation to ensure that the birthing environment is appropriate for birth and that communication is available to the hospital and emergency medical services provider identified in subsection(D)(1).
- J.** During the intrapartum period, a midwife shall:
- 1. Determine if the client is in labor and the appropriate course of action to be taken by:
 - a. Assessing the interval, duration, intensity, location, and pattern of the contractions;
 - b. Determining the condition of the membranes, whether intact or ruptured, and the amount and color of fluid;
 - c. Reviewing with the client the need for an adequate fluid intake, relaxation, activity, and emergency management; and
 - d. Deciding whether to go to client's home, remain in telephone contact, or arrange for transfer of care or consultation;
 - 2. Contact the hospital identified in subsection (D)(1)(a) according to the policies and procedures established by the hospital regarding communication with midwives when the client begins labor and ends labor;
 - 3. During labor, assess the condition of the client and fetus upon initial contact, every half hour in active labor until completely dilated, and every 15 to 20 minutes during pushing, following rupture of the amniotic bag, or until the newborn is delivered, including:
 - a. Initial physical assessment and checking of vital signs every 2 to 4 hours of the client;
 - b. Assessing fetal heart tones every 30 minutes in active first stage labor, and every 15 minutes during second stage, following rupture of the amniotic bag, or with any significant change in labor patterns;
 - c. Periodically assessing contractions, fetal presentation, dilation, effacement, and fetal position by vaginal examination;
 - d. Maintaining proper fluid balance for the client throughout labor as determined by urinary output and monitoring urine for presence of ketones; and
 - e. Assisting in support and comfort measures to the client and family;
 - 4. For deliveries described in subsection (B), during labor determine:
 - a. For primiparas, the progress of active labor by monitoring whether dilation occurs at an average of 1 centimeter per hour until completely dilated, and a second stage does not exceed 2 hours, if applicable;
 - b. Normal progress of active labor for multigravidas by monitoring whether dilation occurs at an average of 1.5 to 2 centimeters per hour until completely dilated, and a second stage does not exceed 1 hour, if applicable; or
 - c. The progress of active labor according to the Management Guidelines recommended by the American Congress of Obstetricians and Gynecologists;
 - 5. After delivery of the newborn:
 - a. Assess the newborn at 1 minute and 5 minutes to determine the Apgar scores;
 - b. Physically assess the newborn for any abnormalities;
 - c. Inspect the client's perineum, vagina, and cervix for lacerations;

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- d. Deliver the placenta within 1 hour and assess the client for signs of separation, frank or occult bleeding; and
- e. Examine the placenta for intactness and to determine the number of umbilical cord vessels; and
- 6. Recognize and respond to any situation requiring immediate intervention.
- K.** During the postpartum period, the midwife shall:
 - 1. During the 2 hours after delivery of the placenta, provide the following care to the client:
 - a. Every 15 to 20 minutes for the first hour and every 30 minutes for the second hour:
 - i. Take vital signs of the client,
 - ii. Perform external massage of the uterus, and
 - iii. Evaluate bleeding;
 - b. Assist the client to urinate within 2 hours following the birth, if applicable;
 - c. Evaluate the perineum, vagina, and cervix for tears, bleeding, or blood clots;
 - d. Assist with maternal newborn and infant bonding;
 - e. Assist with initial breast feeding, instructing the client in the care of the breast, and reviewing potential danger signs, if appropriate;
 - f. Provide instruction to the family about adequate fluid and nutritional intake, rest, and the types of exercise allowed, normal and abnormal bleeding, bladder and bowel function, appropriate baby care, signs and symptoms of postpartum depression, and any symptoms that may pose a threat to the health or life of the client or the client's newborn and appropriate emergency phone numbers;
 - g. Recommend or administer under physician's written orders, the drug RhoGam to an unsensitized Rh-negative mother who delivers an Rh-positive newborn. Administration shall occur not later than 72 hours after birth; and
 - h. Document any medications taken by the client in the client's record to an unsensitized Rh-negative client who delivers an Rh-positive newborn;
 - 2. During the 2 hours after delivery of the placenta, provide the following care to the newborn:
 - a. Perform a newborn physical exam to determine the newborn's gestational age and any abnormalities;
 - b. Comply with the requirements in A.A.C. R9-6-332;
 - c. Recommend or administer Vitamin K under physician's written orders to the newborn. Administration shall occur not later than 72 hours after birth; and
 - d. Document the administration of any medications or vitamins to the newborn in the newborn's record according to the physician's written orders;
 - 3. Evaluate the client or newborn for any abnormal or emergency situation and seek consultation or intervention, if applicable, according to these rules; and
 - 4. Re-evaluate the condition of the client and newborn between 24 and 72 hours after delivery to determine whether the recovery is following a normal course, including:
 - a. Assessing baseline indicators such as the client's vital signs, bowel and bladder function, bleeding, breasts, feeding of the newborn, sleep/rest cycle, activity with any recommendations for change;
 - b. Assessing baseline indicators of well-being in the newborn such as vital signs, weight, cry, suck and feeding, fontanel, sleeping, and bowel and bladder function with documentation of meconium, and providing any recommendations for changes made to the family;
 - c. Submitting blood obtained from a heel stick to the newborn to the state laboratory for screening according to A.R.S. § 36-694(B) and 9 A.A.C. 13, Article 2, unless a written refusal is obtained from the client and documented in the client's record and the newborn's record; and
 - d. Recommending to the client that the client secure medical follow-up for her newborn.
- L.** A midwife shall file a birth certificate with the local registrar within seven calendar days after the birth of the newborn.
- M.** Subsections (B), (C)(1)(b), (C)(1)(d) and (J)(2) and (4) are effective July 1, 2014.

Historical Note

Adopted effective March 14, 1994 (Supp. 94-1). R9-16-108 renumbered to R9-16-111; new Section R9-16-108 renumbered from R9-16-106 and amended by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

R9-16-109. Informed Consent for Midwifery Services

- A.** A midwife shall obtain a written informed consent for midwifery services in a format provided by the Department that contains:
 - 1. The midwife's:
 - a. Name,
 - b. Telephone number,
 - c. License number, and
 - d. E-mail address;
 - 2. The client's:
 - a. Name;
 - b. Address;
 - c. Telephone number;
 - d. Date of birth; and
 - e. E-mail address, if applicable;
 - 3. An attestation that the client was:

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- a. Provided the information required in R9-16-108(C)(1);
 - b. Informed of the emergency care plan as required in R9-16-108(D); and
 - c. Given an opportunity to have questions answered, have an understanding of the information provided, and choose to continue with midwifery services; and
4. The signatures of the client and midwife and date signed.
- B.** A midwife shall ensure that the written informed consent for midwifery services is placed in the client file.
- C.** A midwife shall ensure that a copy of the written informed consent for midwifery services is provided to the:
1. Client, and
 2. Department within five calendar days after a Department request.
- D.** This section is effective October 1, 2013.

Historical Note

Adopted effective March 14, 1994 (Supp. 94-1). R9-16-109 renumbered to R9-16-112; new Section R9-16-109 made by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2). Manifest typographical errors corrected in subsections (A)(3)(a) and (b) to rule Section reference of incorrect Chapter number; request made by department at file number R13-232 (Supp. 13-3).

R9-16-110. Assertion to Decline Required Tests

- A.** Except for R9-16-108(I)(1)(f), if the client declines a test required in R9-16-108(I)(3) and (4), a midwife shall obtain a written assertion of a client's decision to decline a required test in a format provided by the Department, that contains:
1. The midwife's:
 - a. Name,
 - b. Telephone number,
 - c. License number, and
 - d. E-mail address;
 2. The client's:
 - a. Name;
 - b. Address;
 - c. Telephone number;
 - d. Date of birth; and
 - e. E-mail address, if applicable;
 3. The required test being declined by the client;
 4. Additional information as required by the Department;
 5. An attestation that the client:
 - a. Was provided the information as required in R9-16-108(C)(1)(d), and
 - b. Is declining testing; and
 6. The signatures of the client and midwife and date signed.
- B.** A midwife shall ensure that the written assertion of the decision to decline a test is placed in the client file.
- C.** A midwife shall ensure that a copy of the written assertion of the decision to decline a test is provided to the:
1. Client, and
 2. Department within five calendar days after a Department request.
- D.** This section is effective October 1, 2013.

Historical Note

Adopted effective March 14, 1994 (Supp. 94-1). R9-16-110 renumbered to R9-16-113; new Section R9-16-110 made by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2). Manifest typographical error corrected in subsection (A)(5)(a) to rule Section reference of incorrect Chapter number; request made by department at file number R13-232 (Supp. 13-3).

R9-16-111. Prohibited Practice; Transfer of Care

- A.** A midwife shall not provide midwifery services in a location that has the potential to cause harm to the client or the client's child.
- B.** A midwife shall not accept for midwifery services or continue midwifery services for a client who has or develops any of the following:
1. A previous surgery that involved:
 - a. An incision in the uterus, except as provided in R9-16-108(B)(1); or
 - b. A previous uterine surgery that enters the myometrium;
 2. Multiple fetuses;
 3. Placenta previa or placenta accreta;
 4. A history of severe postpartum bleeding, of unknown cause, which required transfusion;
 5. Deep vein thrombosis or pulmonary embolism;
 6. Uncontrolled gestational diabetes;
 7. Insulin-dependent diabetes;
 8. Hypertension;
 9. Rh disease with positive titers;

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10. Active:
 - a. Tuberculosis;
 - b. Syphilis;
 - c. Genital herpes at the onset of labor;
 - d. Hepatitis until treated and recovered, following which midwifery services may resume; or
 - e. Gonorrhea until treated and recovered, following which midwifery services may resume;
 11. Preeclampsia or eclampsia persisting after the second trimester;
 12. A blood pressure of 140/90 or an increase of 30 millimeters of Mercury systolic or 15 millimeters of Mercury diastolic over the client's lowest baseline blood pressure for two consecutive readings taken at least six hours apart;
 13. A persistent hemoglobin level below 10 grams or a hematocrit below 30 during the third trimester;
 14. A pelvis that will not safely allow a baby to pass through during labor;
 15. A serious mental illness;
 16. Evidence of substance abuse, including six months prior to pregnancy, to one of the following, evident during an assessment of a client:
 - a. Alcohol,
 - b. Narcotics, or
 - c. Other drugs;
 17. Except as provided in R9-16-108(B)(2), a fetus with an abnormal presentation;
 18. Labor beginning before the beginning of 36 weeks gestation;
 19. A progression of labor that does not meet the requirements of R9-16-108(J)(4), if applicable;
 20. Gestational age greater than 34 weeks with no prior prenatal care;
 21. A gestation beyond 42 weeks;
 22. Presence of ruptured membranes without onset of labor within 24 hours;
 23. Abnormal fetal heart rate consistently less than 120 beats per minute or more than 160 beats per minute;
 24. Presence of thick meconium, blood-stained amniotic fluid, or abnormal fetal heart tones;
 25. A postpartum hemorrhage of greater than 500 milliliters in the current pregnancy; or
 26. A non-bleeding placenta retained for more than 60 minutes.
- C.** A midwife shall not perform a vaginal delivery after prior Cesarean section for a client who:
1. Had:
 - a. More than one previous Cesarean section;
 - b. A previous Cesarean section:
 - i. With a classical, vertical, or unknown uterine incision;
 - ii. Within 18 months before the expected delivery;
 - iii. With complications, including uterine infection; or
 - iv. Due to failure to progress as a result of cephalopelvic insufficiency; or
 - c. Complications during a previous vaginal delivery after a Cesarean section; or
 2. Has a fetus:
 - a. With fetal anomalies, confirmed by an ultrasound; or
 - b. In a breech presentation.
- D.** A midwife shall not perform a vaginal delivery of a fetus in a breech presentation for a client who:
1. Had a previous:
 - a. Unsuccessful vaginal delivery or other demonstration of an inadequate maternal pelvis, or
 - b. Cesarean section; or
 2. Has a fetus:
 - a. With fetal anomalies, confirmed by an ultrasound;
 - b. With an estimated fetal weight less than 2500 grams or more than 3800 grams; or
 - c. In an incomplete breech presentation.
- E.** If the client has any of the conditions in subsections (B) through (D), a midwife shall:
1. Document the condition in the client record, and
 2. Initiate transfer of care.
- F.** A midwife shall not perform any operative procedures except as provided in R9-16-113.
- G.** A midwife shall not:
1. Use any artificial, forcible, or mechanical means to assist birth; or
 2. Attempt to correct fetal presentations by external or internal movement of the fetus.
- H.** A midwife shall not administer drugs or medications except as provided in R9-16-108(I)(5)(f), (K)(1)(g), (K)(2)(c), or R9-16-113.
- I.** Except as provided in R9-16-113, a midwife shall:
1. Discontinue midwifery services and transfer care of a newborn in which any of the following conditions are present:
 - a. Birth weight less than 2000 grams;
 - b. Pale, blue, or gray color after 10 minutes;
 - c. Excessive edema;
 - d. Major congenital anomalies; or
 - e. Respiratory distress; and

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2. Document the condition in subsection (I)(1) in the newborn record.

Historical Note

Adopted effective March 14, 1994 (Supp. 94-1). R9-16-111 renumbered to R9-16-116; new Section R9-16-111 renumbered from R9-16-108 and amended by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

R9-16-112. Required Consultation

- A.** A midwife shall obtain a consultation at the time a client is determined to have any of the following during the current pregnancy:
1. A positive culture for Group B Streptococcus;
 2. History of seizure disorder;
 3. History of stillbirth, premature labor, or parity greater than 5;
 4. Age younger than 16 years;
 5. A primigravida older than 40 years of age;
 6. Failure to auscultate fetal heart tones by the beginning of 22 weeks gestation;
 7. Failure to gain 12 pounds by the beginning of 30 weeks gestation or gaining more than 8 pounds in any two-week period during pregnancy;
 8. Greater than 1+ sugar, ketones, or protein in the urine on two consecutive visits;
 9. Excessive vomiting or continued vomiting after the end of 20 weeks gestation;
 10. Symptoms of decreased fetal movement;
 11. A fever of 100.4° F or 38° C or greater measured twice at 24 hours apart;
 12. Tender uterine fundus;
 13. Effacement or dilation of the cervix, greater than a fingertip, accompanied by contractions, prior to the beginning of 36 weeks gestation;
 14. Measurements for fetal growth that are not within 2 centimeters of the gestational age;
 15. Second degree or greater lacerations of the birth canal;
 16. Except as provided in R9-16-111(B)(19), an abnormal progression of labor;
 17. An unengaged head at 7 centimeters dilation in active labor;
 18. Failure of the uterus to return to normal size in the current postpartum period;
 19. Persistent shortness of breath requiring more than 24 breaths per minute, or breathing which is difficult or painful;
 20. Gonorrhea;
 21. Chlamydia;
 22. Syphilis;
 23. Heart disease;
 24. Kidney disease;
 25. Blood disease; or
 26. A positive test result for:
 - a. HIV,
 - b. Hepatitis B, or
 - c. Hepatitis C.
- B.** A midwife shall obtain a consultation at the time a newborn demonstrates any of the following conditions:
1. Weight less than 2500 grams or 5 pounds, 8 ounces;
 2. Congenital anomalies;
 3. An Apgar score less than 7 at 5 minutes;
 4. Persistent breathing at a rate of more than 60 breaths per minute;
 5. An irregular heartbeat;
 6. Persistent poor muscle tone;
 7. Less than 36 weeks gestation or greater than 42 weeks gestation by gestational exam;
 8. Yellowish-colored skin within 48 hours;
 9. Abnormal crying;
 10. Meconium staining of the skin;
 11. Lethargy;
 12. Irritability;
 13. Poor feeding;
 14. Excessively pink coloring over the entire body;
 15. Failure to urinate or pass meconium in the first 24 hours of life;
 16. A hip examination which results in a clicking or incorrect angle;
 17. Skin rashes not commonly seen in the newborn; or
 18. Temperature persistently above 99.0° or below 97.6° F.
- C.** The midwife shall inform the client of the consultation required in subsections (A) or (B) and recommendations of the physician or certified nurse midwife.
- D.** The midwife shall document the consultation required in subsections (A) or (B) and recommendations received in the client record or newborn record.

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Historical Note

Adopted effective March 14, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 5029, effective September 30, 2001 (Supp. 01-4). New Section R9-16-112 renumbered from R9-16-109 and amended by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

R9-16-113. Emergency Measures

- A.** In an emergency situation in which the health or safety of the client or newborn are determined to be at risk, a midwife:
1. Shall ensure that an emergency medical services provider is called; and
 2. May perform the following procedures as necessary:
 - a. Cardiopulmonary resuscitation of the client or newborn with a bag and mask;
 - b. Administration of oxygen at no more than 8 liters per minute via mask for the client and 5 liters per minute for the newborn via neonatal mask;
 - c. Episiotomy to expedite the delivery during fetal distress;
 - d. Suturing of episiotomy or tearing of the perineum to stop active bleeding, following administration of local anesthetic, contingent upon consultation with a physician or certified nurse midwife, or physician's written orders;
 - e. Release of shoulder dystocia by utilizing:
 - i. Hyperflexion of the client's legs to the abdomen,
 - ii. Application of external pressure suprapubically,
 - iii. Rotation of the nonimpacted shoulder until the impacted shoulder is released,
 - iv. Delivery of the posterior shoulder,
 - v. Application of posterior pressure on the anterior shoulder, or
 - vi. Positioning of the client on all fours with the back arched;
 - f. Manual exploration of the uterus for control of severe bleeding; or
 - g. Manual removal of placenta.
- B.** A licensed midwife may administer a maximum dose of 20 units of pitocin intramuscularly, in 10-unit dosages each, 30 minutes apart, to a client for the control of postpartum hemorrhage, contingent upon physician or certified nurse midwife consultation and written orders by a physician, and arrangements for immediate transport of the client to a hospital.
- C.** A midwife shall document in the client's record any medications taken by a client for the control of postpartum hemorrhage.

Historical Note

New Section R9-16-113 renumbered from R9-16-110 and amended by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

R9-16-114. Midwife Report after Termination of Midwifery Services

- A.** A midwife shall complete a midwife report for each client, in a format provided by the Department, that includes the following:
1. The midwife's:
 - a. First name,
 - b. Last name, and
 - c. License number;
 2. The client's:
 - a. Date of birth;
 - b. Client number;
 - c. Date of last menstrual period;
 - d. Estimated date of delivery;
 - e. Gravida (number);
 - f. Para (number); and
 - g. If applicable, whether the client had a vaginal delivery after prior Cesarean section or vaginal delivery of a fetus in a complete breech or frank breech presentation;
 3. A description of the maternal outcome, including any complications;
 4. If a vaginal delivery after prior Cesarean section or vaginal delivery of a fetus in a complete breech or frank breech presentation:
 - a. Rate of dilation, and
 - b. Duration of second stage labor;
 5. If applicable, the newborn's:
 - a. Date of birth;
 - b. Gender;
 - c. Weight;
 - d. Length;
 - e. Head circumference;
 - f. Designation of average, small, or large for gestational age;
 - g. Apgar score at 1 minute;
 - h. Apgar score at 5 minutes;
 - i. Existence of complications;
 - j. Description of complications, if applicable;

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- k. Birth certificate filing date; and
- l. Birth certificate number, if available;
6. Whether the client required transfer of care and, if applicable:
 - a. Method of transport,
 - b. Type of facility or individual to which the midwife transferred care of the client,
 - c. Name of destination,
 - d. Time arrived at destination,
 - e. Confirmation the emergency care plan was utilized, and
 - f. Medical reason for transfer of care;
7. The date midwifery services were terminated;
8. Reason for the termination of midwifery services;
9. If termination of midwifery services was due to a medical condition, the specific medical condition;
10. Whether information was provided on newborn screening; and
11. Whether newborn screening tests were ordered as required in A.R.S. § 36-694.
- B.** The midwife shall submit a midwife report for a client to the Department within 30 calendar days after the termination of midwifery services to the client.

Historical Note

Section made by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

R9-16-115. Client and Newborn Records

- A.** A midwife shall ensure that a record is established and maintained according to A.R.S. §§ 12-2291 and 12-2297 for each:
 1. Client, and
 2. Newborn delivered by the midwife from a client.
- B.** A midwife shall ensure that a record for each client includes the following:
 1. The client's full name, date of birth, address, and client number;
 2. Names, addresses, and telephone numbers of the client's spouse or other individuals designated by the client to be contacted in an emergency;
 3. Written informed consent for midwifery services, as required in R9-16-108(C)(2);
 4. Assertion to decline required tests, as required in R9-16-110(A)(3);
 5. A copy of the emergency care plan, as required in R9-16-108(E);
 6. The date the midwife began providing midwifery services to the client;
 7. The date the client is expected to deliver the newborn;
 8. The date the newborn was delivered, if applicable;
 9. An initial assessment of the client to:
 - a. Determine whether the client has a history of a condition or circumstance that would preclude care of the client by the midwife, as specified in R9-16-111; and
 - b. Determine the:
 - i. Number and outcome of previous pregnancies, and
 - ii. Number of previous medical or midwife visits the client has had during the current pregnancy;
 10. Progress notes documenting the midwifery services provided to the client;
 11. For a delivery identified in R9-16-108(B):
 - a. Rate of dilation, and
 - b. Duration of second stage labor;
 12. Laboratory and diagnostic reports, according to R9-16-108(I);
 13. Documentation of consultations as required in R9-16-112, including:
 - a. Reason for the consultation,
 - b. Name of physician or certified nurse midwife,
 - c. Date of consultation,
 - d. Time of consultation, and
 - e. Recommendation made by the physician or certified nurse midwife;
 14. Written reports received from consultations as required in R9-16-112;
 15. A description of any conditions or circumstances arising during the pregnancy that required the transfer of care;
 16. The name of the physician, certified nurse midwife, or hospital to which the care of the client was transferred, if applicable;
 17. Documentation of medications or vitamins taken by the client;
 18. Documentation of medications or vitamins administered to the client and the physician's written orders for the medications or vitamins;
 19. The outcome of the pregnancy;
 20. The date the midwife stopped providing midwifery services to the client; and
 21. Instructions provided to the client before the midwife stopped providing midwifery services to the client.
- C.** A midwife shall ensure that a record for each newborn includes the following:
 1. The full name, date of birth, and address of the newborn's mother;
 2. The newborn's:

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- a. Date of birth,
- b. Gender,
- c. Weight at birth,
- d. Length at birth, and
- e. Apgar scores at 1 minute and 5 minutes after birth;
3. The newborn's estimated gestational age at birth;
4. Progress notes documenting the midwifery services provided to the newborn;
5. Laboratory and diagnostic reports, as required in R9-16-108(I);
6. Documentation of consultations as required in R9-16-112:
 - a. Reason for the consultation,
 - b. Name of physician or certified nurse midwife,
 - c. Date of consultation,
 - d. Time of consultation, and
 - e. Recommendation made by the physician or certified nurse midwife;
7. Written reports received from consultations as required in R9-16-112;
8. A description of any conditions or circumstances arising during or after the newborn's birth that required the transfer of care;
9. The name of the physician, certified nurse midwife, or hospital to which the care of the newborn was transferred, if applicable;
10. Documentation of medications or vitamins taken by the newborn;
11. Documentation of medications or vitamins administered to the newborn and the physician's written orders for the medications or vitamins;
12. Documentation of newborn screening, including when the specimen collection kit, as defined in A.A.C. R9-13-201, was submitted and results received, as required in R9-16-108(K)(4)(c);
13. The date the midwife stopped providing midwifery services to the newborn; and
14. Instructions provided to the client about the newborn before the midwife stopped providing midwifery services to the newborn.

Historical Note

New Section R9-16-115 renumbered from R9-16-107 and amended by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

R9-16-116. Denial, Suspension, or Revocation of License; Civil Penalties; Procedures

In addition to the grounds specified in A.R.S. §§ 36-756 and 13-904(E), the Department may deny, suspend, or revoke a license permanently or for a definite period of time, and may assess a civil penalty for each violation, for any of the following causes:

1. Practicing under a false name or alias so as to interfere with or obstruct the investigative or regulatory process,
2. Practicing under the influence of drugs or alcohol,
3. Falsification of records,
4. Obtaining any fee for midwifery services by fraud or misrepresentation,
5. Permitting another to use the midwife's license, or
6. Knowingly providing false information to the Department.

Historical Note

New Section R9-16-116 renumbered from R9-16-111 and amended by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

R9-16-117. Midwifery Advisory Committee

- A.** The director of the Department shall establish a midwifery advisory committee consisting of:
 1. Four midwives who are licensed according to Title 36, Chapter 6, Article 7 of the Arizona Revised Statutes;
 2. One public member who has used or who has significant experience with midwifery services;
 3. One physician who is licensed according to Title 32, Chapter 13, of the Arizona Revised Statutes, or one physician who is licensed according to Title 32, Chapter 17, of the Arizona Revised Statutes, and who has experience in obstetrics;
 4. One nurse midwife who is licensed and certified according to Title 32, Chapter 15 of the Arizona Revised Statutes; and
 5. One ex-officio member.
- B.** Midwifery advisory committee members:
 1. Serve at the discretion of the director of the Department,
 2. May serve for three-year terms, and
 3. Are not eligible for compensation or reimbursement of expenses.
- C.** The midwifery advisory committee shall, at a minimum, convene annually.
- D.** The midwifery advisory committee shall be chaired by the director of the Department.
- E.** The midwifery advisory committee shall:
 1. Examine aggregate data from the midwife reports required in R9-16-114;
 2. Examine any notifications received by the Department required in R9-16-104(B);
 3. Examine evidence-based research pertaining to the practice of midwifery;
 4. Develop an annual report on midwifery and home births in this state during the previous fiscal year, including:
 - a. An analysis of the information from subsections (E)(1) and (2),

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- b. A summary of the information from subsection (E)(3), and
- c. Recommendations for changes to the rules in this Article;
- 5. Submit a copy of the report required in subsection (E)(4) to the Department on or before November 15 of each year, beginning in 2015;
- 6. Assist in the development of the informed consent for midwifery services according to R9-16-109 by October 1, 2013; and
- 7. Assist in the development of the assertion to decline required tests according to R9-16-110 by October 1, 2013.

Historical Note

New Section made by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

36-104. Powers and duties

This section is not to be construed as a statement of the department's organization. This section is intended to be a statement of powers and duties in addition to the powers and duties granted by section 36-103. The director shall:

1. Administer the following services:
 - (a) Administrative services, which shall include at a minimum the functions of accounting, personnel, standards certification, electronic data processing, vital statistics and the development, operation and maintenance of buildings and grounds utilized by the department.
 - (b) Public health support services, which shall include at a minimum:
 - (i) Consumer health protection programs that include at least the functions of community water supplies, general sanitation, vector control and food and drugs.
 - (ii) Epidemiology and disease control programs that include at least the functions of chronic disease, accident and injury control, communicable diseases, tuberculosis, venereal disease and others.
 - (iii) Laboratory services programs.
 - (iv) Health education and training programs.
 - (v) Disposition of human bodies programs.
 - (c) Community health services, which shall include at a minimum:
 - (i) Medical services programs that include at least the functions of maternal and child health, preschool health screening, family planning, public health nursing, premature and newborn program, immunizations, nutrition, dental care prevention and migrant health.
 - (ii) Dependency health care services programs that include at least the functions of need determination, availability of health resources to medically dependent individuals, quality control, utilization control and industry monitoring.
 - (iii) Children with physical disabilities services programs.
 - (iv) Programs for the prevention and early detection of an intellectual disability.
 - (d) Program planning, which shall include at least the following:
 - (i) An organizational unit for comprehensive health planning programs.
 - (ii) Program coordination, evaluation and development.
 - (iii) Need determination programs.
 - (iv) Health information programs.
2. Include and administer, within the office of the director, staff services, which shall include at a minimum budget preparation, public information, appeals, hearings, legislative and federal government liaison, grant development and management and departmental and interagency coordination.
3. Make rules and regulations for the organization and proper and efficient operation of the department.

4. Determine when a health care emergency or medical emergency situation exists or occurs within the state that cannot be satisfactorily controlled, corrected or treated by the health care delivery systems and facilities available. When such a situation is determined to exist, the director shall immediately report that situation to the legislature and the governor. The report shall include information on the scope of the emergency, recommendations for solution of the emergency and estimates of costs involved.
5. Provide a system of unified and coordinated health services and programs between the state and county governmental health units at all levels of government.
6. Formulate policies, plans and programs to effectuate the missions and purposes of the department.
7. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of funds.
8. Be designated as the single state agency for the purposes of administering and in furtherance of each federally supported state plan.
9. Provide information and advice on request by local, state and federal agencies and by private citizens, business enterprises and community organizations on matters within the scope of the department's duties subject to the departmental rules and regulations on the confidentiality of information.
10. Establish and maintain separate financial accounts as required by federal law or regulations.
11. Advise with and make recommendations to the governor and the legislature on all matters concerning the department's objectives.
12. Take appropriate steps to reduce or contain costs in the field of health services.
13. Encourage and assist in the adoption of practical methods of improving systems of comprehensive planning, of program planning, of priority setting and of allocating resources.
14. Encourage an effective use of available federal resources in this state.
15. Research, recommend, advise and assist in the establishment of community or area health facilities, both public and private, and encourage the integration of planning, services and programs for the development of the state's health delivery capability.
16. Promote the effective utilization of health manpower and health facilities that provide health care for the citizens of this state.
17. Take appropriate steps to provide health care services to the medically dependent citizens of this state.
18. Certify training on the nature of sudden infant death syndrome, which shall include information on the investigation and handling of cases involving sudden and unexplained infant death for use by law enforcement officers as part of their basic training requirement.

19. Adopt protocols on the manner in which an autopsy shall be conducted under section 11-597, subsection D in cases of sudden and unexplained infant death.
20. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.
21. Administer the federal family violence prevention and services act grants, and the department is designated as this state's recipient of federal family violence prevention and services act grants.
22. Accept and spend private grants of monies, gifts and devises for the purposes of methamphetamine education. The department shall disburse these monies to local prosecutorial or law enforcement agencies with existing programs, faith based organizations and nonprofit entities that are qualified under section 501(c)(3) of the United States internal revenue code, including nonprofit entities providing services to women with a history of dual diagnosis disorders, and that provide educational programs on the repercussions of methamphetamine use. State general fund monies shall not be spent for the purposes of this paragraph. If the director does not receive sufficient monies from private sources to carry out the purposes of this paragraph, the director shall not provide the educational programs prescribed in this paragraph. Grant monies received pursuant to this paragraph are no lapsing and do not revert to the state general fund at the close of the fiscal year.
23. Identify successful methamphetamine prevention programs in other states that may be implemented in this state.
24. Pursuant to chapter 13, article 8 of this title, coordinate all public health and risk assessment issues associated with a chemical or other toxic fire event if a request for the event is received from the incident commander, the emergency response commission or the department of public safety and if funding is available. Coordination of public health issues shall include general environmental health consultation and risk assessment services consistent with chapter 13, article 8 of this title and, in consultation with the Arizona poison control system, informing the public as to potential public health risks from the environmental exposure. Pursuant to chapter 13, article 8 of this title, the department of health services shall also prepare a report, in consultation with appropriate state, federal and local governmental agencies, that evaluates the public health risks from the environmental exposure. The department of health services' report shall include any department of environmental quality report and map of smoke dispersion from the fire, the results of any environmental samples taken by the department of environmental quality and the toxicological

implications and public health risks of the environmental exposure. The department of health services shall consult with the Arizona poison control system regarding toxicology issues and shall prepare and produce its report for the public as soon as practicable after the event. The department of health services shall not use any monies pursuant to section 49-282, subsection E to implement this paragraph.

36-132. Department of health services; functions; contracts

- A. The department shall, in addition to other powers and duties vested in it by law:
1. Protect the health of the people of the state.
 2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.
 3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of the state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with the provisions of chapter 3 of this title, and sections 36-693, 36-694 and 39-122.
 4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.
 5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of education of children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.
 6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.
 7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.

8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of school children, including special fields such as the prevention of blindness and conservation of sight and hearing.
9. Encourage and aid in the coordination of local programs concerning nutrition of the people of the state.
10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.
11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.
12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection H, paragraph 10.
13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.
14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter 8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in the enforcement of the federal food, drug and cosmetic act of 1938 (52 Stat. 1040; 21 United States Code sections 1 through 905).
15. Recruit and train personnel for state, local and district health departments.
16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.
17. License and regulate health care institutions according to chapter 4 of this title.
18. Issue or direct the issuance of licenses and permits required by law.
19. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:
 - (a) Screening in early pregnancy for detecting high risk conditions.
 - (b) Comprehensive prenatal health care.
 - (c) Maternity, delivery and postpartum care.
 - (d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.
 - (e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.
 21. License and regulate the health and safety of group homes for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the accreditation, except that no licensing period shall be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.
- B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants. The department may also expend these monies to further applicable scientific research within this state.
 - C. The department, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.
 - D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to supplement treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes

36-136. Powers and duties of director; compensation of personnel; rules

- A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.
 2. Perform all duties necessary to carry out the functions and responsibilities of the department.
 3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.
 4. Administer and enforce the laws relating to health and sanitation and the rules of the department.
 5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of the state.
 6. Exercise general supervision over all matters relating to sanitation and health throughout the state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of the state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of the state that the director has the duty to administer.
 7. Prepare sanitary and public health rules.
 8. Perform other duties prescribed by law.
- B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of the state, the director may inspect any person or property in transportation through the state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.
- C. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.
- D. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:
1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.
- E. The compensation of all personnel shall be as determined pursuant to section 38-611.
 - F. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.
 - G. Notwithstanding subsection H, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for no longer than eighteen months.
 - H. The director, by rule, shall:
 1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.
 2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.
 3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.
 4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling,

storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards.

The rules shall provide an exemption relating to food or drink that is:

- (a) Served at a noncommercial social event such as a potluck.
- (b) Prepared at a cooking school that is conducted in an owner-occupied home.
- (c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.
- (d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.
- (e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on site for immediate consumption.
- (f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.
- (g) Baked and confectionary goods that are not potentially hazardous and that are prepared in a kitchen of a private home for commercial purposes if packaged with a label that clearly states the address of the maker, includes contact information for the maker, lists all the ingredients in the product and discloses that the product was prepared in a home. The label must be given to the final consumer of the product. If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must obtain a food handler's card or certificate if one is issued by the local county and must register with an online registry established by the department pursuant to paragraph 13 of this subsection. For the purposes of this subdivision, "potentially hazardous" means baked and confectionary goods that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.
- (h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.
6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.
7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.
8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparation of food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from

rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.
10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.
11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.
12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.
13. Establish an online registry of food preparers that are authorized to prepare food for commercial purposes pursuant to paragraph 4 of this subsection.
 - I. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.
 - J. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or

instrumentality, except that with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

- K. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.
- L. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.
- M. Until the department adopts exemptions by rule as required by subsection H, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection H of this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.
- N. Until the department adopts exemptions by rule as required by subsection H, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption exempt from the rules prescribed in subsection H of this section.

36-751. Definitions

In this article, unless the context otherwise requires:

1. "Department" means the department of health services.
2. "Director" means the director of the department of health services.
3. "Midwife" means a person who delivers a baby or provides health care related to pregnancy, labor, delivery and postpartum care of the mother and her infant.

36-752. Licensure; exceptions

- A. Except as provided in subsection B of this section, no person may act as a midwife without being licensed pursuant to this article.
- B. The following persons are exempt from the licensure requirements of this section:
 1. A physician licensed pursuant to title 32 who is permitted within his scope of practice to deliver infants.
 2. A registered nurse certified by the state board of nursing as a qualified nurse-midwife.

3. A person acting under the direction and supervision of a physician licensed pursuant to title 32 who is permitted within his scope of practice to deliver infants.
4. A student of midwifery in the course of taking an internship, preceptorship or clinical training program, who is under the direction and supervision of a midwife licensed pursuant to this article.
5. A person who has no prearranged agreement to provide delivery assistance, but who delivers a baby as a result of an emergency situation.
6. A mother or father delivering their own infant.

36-753. Application for license as midwife

A person who desires to obtain a license to practice midwifery shall make written application to the director of the department of health services, upon a form to be supplied by the director and shall furnish such information as may be required by the director.

36-754. Licensing of midwives; renewal of license

- A. The director shall grant a midwife's license to a person meeting the qualifications prescribed by this article and rules adopted pursuant to this article and paying applicable fees.
- B. A license is valid for two years and may be renewed biennially on application to the director and payment of applicable fees.
- C. A person shall file an application for renewal at least thirty days and no more than sixty days before the expiration date of the current license.

36-755. Powers and duties of the director

- A. The director may adopt rules necessary for the proper administration and enforcement of this article.
- B. The director shall, by rule:
 1. Define and describe, consistent with this article and the laws of this state, the duties and limitations of the practice of midwifery.
 2. Adopt standards with respect to the practice of midwifery designed to safeguard the health and safety of the mother and child.
 3. Establish the criteria for granting, denying, suspending and revoking a license in order to protect the health and safety of the mother and child.
 4. Describe and define reasonable and necessary minimum qualifications for midwives, including:
 - (a) The ability to read and write.
 - (b) Knowledge of the fundamentals of hygiene.
 - (c) The ability to recognize abnormal or potentially abnormal conditions during pregnancy, labor and delivery and following birth.
 - (d) Knowledge of the laws of this state concerning reporting of births, prenatal blood tests and newborn screening and of the rules pertaining to midwifery.
 - (e) Education requirements.

- (f) Age requirements.
- (g) Good moral character.

36-756. Grounds for denial of license and disciplinary action; hearing; appeal; civil penalties; injunctions

- A. The director may deny, suspend or revoke the license of any midwife who:
 - 1. Violates any provision of this article or the rules adopted under this article.
 - 2. Has been convicted of a felony or a misdemeanor involving moral turpitude.
 - 3. Indulges in conduct or a practice detrimental to the health or safety of the mother and child.
- B. The department may deny a license without holding a hearing. An applicant may appeal this decision pursuant to title 41, chapter 6, article 10.
- C. The department shall conduct any hearing to suspend or revoke a license in accordance with the procedures established pursuant to title 41, chapter 6, article 10. If the director determines at the conclusion of a hearing that grounds exist to suspend or revoke a license, he may do so permanently or for any period of time he deems appropriate and under any conditions that he deems appropriate. An applicant for licensure or a licensee may appeal the final decision of the director.
- D. In addition to other disciplinary action, the director may assess a civil penalty of not more than one hundred dollars for each violation of this article or a rule adopted pursuant to this article as determined by a hearing held pursuant to this section. Each day that a violation continues constitutes a separate offense. The attorney general or the county attorney may bring an action in the name of this state to enforce a civil penalty. The action shall be filed in the superior court or in justice court in the county where the violation occurred.
- E. In addition to other available remedies, the director may apply to the superior court for an injunction to restrain a person from violating a provision of this article or a rule adopted pursuant to this article. The court shall grant a temporary restraining order, a preliminary injunction or a permanent injunction without bond. The defendant may be served in any county of this state. The action shall be brought on behalf of the director by the attorney general or the county attorney of the county in which the violation is occurring.

36-756.01. Investigations; right to examine evidence; subpoenas; confidentiality

- A. The director may investigate information that indicates that a person is violating this article. In connection with an investigation, the department may examine and copy documents and other physical evidence wherever located that relate to the conduct or competency of a midwife pursuant to the requirements of this article.
- B. Pursuant to an investigation or an administrative proceeding, the director may issue subpoenas to compel the testimony of witnesses or to demand the production of relevant documents and other physical evidence. If a person

refuses to comply with a subpoena, the director may apply to the superior court for an order to compel compliance.

- C. Patient records, including clinical records, medical reports, laboratory statements and reports, files, films and oral statements relating to patient examinations, findings and treatment, that are kept by the director pursuant to an investigation are not available to the public. The director shall keep confidential the names of patients whose records are reviewed during the course of an investigation or hearing.

36-758. Fees

The director, by rule, shall establish and collect nonrefundable fees that do not exceed:

1. Twenty-five dollars for an initial application.
2. Fifty dollars for an initial license.
3. Two hundred fifty dollars for testing.
4. Fifty dollars for license renewal.
5. Ten dollars for a duplicate license.

36-759. Use of title; prohibitions

It is a violation of this article for a person who is not licensed pursuant to this article to use the title "licensed midwife" and the abbreviation "L.M." or to use any other words, letters, signs or figures to indicate that the person is a licensed midwife.

36-760. Persons and acts not affected by this article

The provisions of this article do not apply to a person who provides information and support in preparation for a normal labor and delivery and assists in the delivery of a baby if that person does not do the following:

1. Advertise as a midwife or as a provider of midwife services.
2. Accept any form of compensation for midwife services.
3. Use any words, letters, signs or figures to indicate that the person is a midwife.

41-1073. Time frames; exception

- A. No later than December 31, 1998, an agency that issues licenses shall have in place final rules establishing an overall time frame during which the agency will either grant or deny each type of license that it issues. Agencies shall submit their overall time frame rules to the governor's regulatory review council pursuant to the schedule developed by the council. The council shall schedule each agency's rules so that final overall time frame rules are in place no later than December 31, 1998. The rule regarding the overall time frame for each type of license shall state separately the administrative completeness review time frame and the substantive review time frame.
- B. If a statutory licensing time frame already exists for an agency but the statutory time frame does not specify separate time frames for the administrative completeness review and the substantive review, by rule the agency shall establish separate time frames for the administrative completeness review and the substantive review, which together shall not

exceed the statutory overall time frame. An agency may establish different time frames for initial licenses, renewal licenses and revisions to existing licenses.

- C. The submission by the department of environmental quality of a revised permit to the United States environmental protection agency in response to an objection by that agency shall be given the same effect as a notice granting or denying a permit application for licensing time frame purposes. For the purposes of this subsection, "permit" means a permit required by title 49, chapter 2, article 3.1 or section 49-426.
- D. In establishing time frames, agencies shall consider all of the following:
 - 1. The complexity of the licensing subject matter.
 - 2. The resources of the agency granting or denying the license.
 - 3. The economic impact of delay on the regulated community.
 - 4. The impact of the licensing decision on public health and safety.
 - 5. The possible use of volunteers with expertise in the subject matter area.
 - 6. The possible increased use of general licenses for similar types of licensed businesses or facilities.
 - 7. The possible increased cooperation between the agency and the regulated community.
 - 8. Increased agency flexibility in structuring the licensing process and personnel.
- E. This article does not apply to licenses issued either:
 - 1. Pursuant to tribal state gaming compacts.
 - 2. Within seven days after receipt of initial application.
 - 3. By a lottery method.

41-1074. Compliance with administrative completeness review time frame

- A. An agency shall issue a written notice of administrative completeness or deficiencies to an applicant for a license within the administrative completeness review time frame.
- B. If an agency determines that an application for a license is not administratively complete, the agency shall include a comprehensive list of the specific deficiencies in the written notice provided pursuant to subsection A. If the agency issues a written notice of deficiencies within the administrative completeness time frame, the administrative completeness review time frame and the overall time frame are suspended from the date the notice is issued until the date that the agency receives the missing information from the applicant.
- C. If an agency does not issue a written notice of administrative completeness or deficiencies within the administrative completeness review time frame, the application is deemed administratively complete. If an agency issues a timely written notice of deficiencies, an application shall not be complete until all requested information has been received by the agency.

41-1075. Compliance with substantive review time frame

- A. During the substantive review time frame, an agency may make one comprehensive written request for additional information. The agency and

applicant may mutually agree in writing to allow the agency to submit supplemental requests for additional information. If an agency issues a comprehensive written request or a supplemental request by mutual written agreement for additional information, the substantive review time frame and the overall time frame are suspended from the date the request is issued until the date that the agency receives the additional information from the applicant.

- B. By mutual written agreement, an agency and an applicant for a license may extend the substantive review time frame and the overall time frame. An extension of the substantive review time frame and the overall time frame may not exceed twenty-five per cent of the overall time frame.

41-1076. Compliance with overall time frame

Unless an agency and an applicant for a license mutually agree to extend the substantive review time frame and the overall time frame pursuant to section 41-1075, an agency shall issue a written notice granting or denying a license within the overall time frame to an applicant. If an agency denies an application for a license, the agency shall include in the written notice at least the following information:

1. Justification for the denial with references to the statutes or rules on which the denial is based.
2. An explanation of the applicant's right to appeal the denial. The explanation shall include the number of days in which the applicant must file a protest challenging the denial and the name and telephone number of an agency contact person who can answer questions regarding the appeals process.