



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rules and orders that were adopted by the Department of Economic Security continue to be in effect until superseded by administrative action by the Department of Child Safety.”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.