

ARIZONA DEPARTMENT OF CHILD SAFETY
Five-Year-Review Report
Title 21. Child Safety
Chapter 1. Department of Child Safety - Administration
Article 2. Comprehensive Medical and Dental Program

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 8-453(A)(5)

Specific Statutory Authority: A.R.S. § 8-512

2. The objective of each rule:

Rule	Objective
R21-1-201. Definitions	The objective of this rule is to provide a uniform set of definitions used throughout this Article.
R21-1-202. Eligible Member	The objective of this rule is to outline the distinction between an eligible and non- eligible member. The rule also explains the Department’s responsibility to notify AHCCCS when a member no longer meets membership eligibility.
R21-1-203. Expectations, Limitations, and Exclusions	The objective of this rule is to describe services the Department will not cover.
R21-1-204. Prior Authorization	The objective of this rule is to explain the prior authorization criteria.
R21-1-205. Coordination of Benefits	The objective of this rule is to explain the Department’s actions to obtain information on other insurance for the purposes of handling coordination of benefits.
R21-1-206. Identification Card	The objective of this rule is to describe how the Department issues identification cards for children receiving services through this program and criteria for when the identification card must be returned to the Department.
R21-1-207. Payment and Review of Claims	The objective of this rule is to describe submission requirements for payment of a claim.

R21-1-208. Abuse and Misuse of the Program	The objective of this rule is to establish the Department's requirement to monitor program compliance and develop a process for investigating reports of alleged abuse.
R21-1-209. Administration of the Program	The objective of this rule is to describe how the Department can administer the program through contracted providers.
R21-1-210. Program Practices	The objective of this rule is to explain that services provided are subject to all federal and state laws, regulations and rules regarding a member's confidential health and personal information; literacy and culture.
R21-1-211. Consent for Treatment	The objective of this rule is to describe when consent is necessary before medical treatment is rendered.
R21-1-212. AHCCCS Fee Schedule	The objective of this rule is to explain that CMDP's payment for services rendered are in accordance with the AHCCCS fee schedule unless otherwise permitted by statute or by agreement between AHCCCS and the Department.
R21-1-213. Claim Disputes and Appeals	The objective of this rule is to identify governance of claim disputes and appeals.

3. **Are the rules effective in achieving their objectives?** Yes X No ___
4. **Are the rules consistent with other rules and statutes?** Yes X No ___
5. **Are the rules enforced as written?** Yes X No ___
6. **Are the rules clear, concise, and understandable?** Yes X No ___
7. **Has the agency received written criticisms of the rules within the last five years?** Yes X No ___

The Department of Child Safety (DCS) has not received written criticisms of the rules subject to this report since they were finalized under exempt rulemaking in November 2015. During the rulemaking activities in 2015, the Department received public comments through public hearings and through an on-line survey. Comments received included requests to review language to ensure that the rules encompass all settings for out-of-home care; include language describing coverage for young adults if eligible; and expand the language for interpretation and translation services to be available at no charge to the parents, guardians, custodians or the CMDP member. The Department reviewed and incorporated comments where applicable in the final rule package in 2015.

8. Economic, small business, and consumer impact comparison:

The Department adopted the rules in Chapter 1 Article 2 under its own title (Title 21. Child Safety) on November 30, 2015. There were no economic, small business, and consumer impact statements prepared as part of the exempt rulemaking.

CMDP is the medical and dental health plan for Medicaid eligible children placed in out-of-home care and functions as the integrated health plan (providing medical, dental and behavioral health services) for children who are not Medicaid eligible. CMDP complies with Arizona Health Care Cost Containment System (AHCCCS) regulations and covers a full scope of services according to the federal mandates of the Early Periodic Screening, Diagnosis, and Treatment (EPSDT) program. These services range from immunizations, inpatient and outpatient hospital services, physician services, medications, dental services. EPSDT also includes diagnostic, screening, preventive and rehabilitative services. CMDP professional staff and consultants perform consultation, peer review, prior authorization, and utilization and quality management to optimize the delivery of high quality health care services appropriate to the needs of each child. Medical and Dental services are currently reimbursed through a fee-for-service model based upon AHCCCS fee schedules. CMDP also covers services for children in out-of-home care and who reside outside of Arizona when these children remain in DCS custody and do not qualify for Medicaid in the receiving state.

The rules in this article affect small business such as physicians, dentists, therapists, durable medical equipment suppliers, and other health care practitioners. The rules also affect children in out-of-home care, out-of-home care providers, and other state agencies.

Population affected

As of January 31, 2019, there were 13,269 children enrolled in CMDP. Of those children enrolled, approximately 96%, or 12,768 were Medicaid eligible and 4% or 501 were non-Medicaid eligible.

Employees

There are 67 full-time employees working in the CMDP unit within the Department.

Funding

CMDP services are funded through a combination of federal and general fund dollars. Total funding for CMDP is approximately \$48 million for state fiscal year 2019. CMDP also seeks funds obtained from the coordination of benefits with third party insurers.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes ___ No X

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

This is the first review of the rules in Title 21, Chapter 1, Article 2. The rules in this Article were made by final exempt rulemaking at 21 A.A.R. 2554, October 30, 2015 and became effective November 30, 2015.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Department believes the current rules pose the minimum cost and burden on business, the regulated public and on the general public.

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

Federal laws 42 U.S.C. Ch. 67, §§ 5101 et seq.; 42 U.S.C. Ch. 7, Subchapters IV/Part B and IV/Part E; and 42 U.S.C. § 670 et seq.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

The Department has determined that A.R.S. § 41-1037 does not apply to these rules because the Department is not proposing a new rule or amendment to an existing rule that require the issuance of a regulatory permit, license or agency authorization.

14. **Proposed course of action**

The Department has reviewed the current rules and does not plan any additional rulemaking activity for these rules unless there are statutory changes.

The 2019 Fifty-Fourth Legislature-First Regular Session includes an introduction to a bill, which impacts the services currently being provided by CMDP and the current rules. If the bill ultimately passes, the Department will work with the Governor's office to request an exception from the moratorium and approval to proceed with rulemaking to address the needed changes that would result from statute changes, with a target date of completion of January 2021.

ARIZONA DEPARTMENT OF CHILD SAFETY

Five-Year-Review Report

Title 21. Child Safety

Chapter 6 Department of Child Safety – Foster Home Licensing

Article 1. Definitions

Article 2. Licensing Agency Requirements for Foster Home Licensing Agencies

Article 3. Licensing Requirements for Foster Parents

Article 4. The Licensing Process for Foster Parents

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 8-453(A)(5)

Specific Statutory Authority: A.R.S. § 8-502, 8-503, 8-506, 8-507, 8-509, 8-511, 8-514, 8-453(A)(11), 8-453(B)(2), 8-529 and 8-530.

2. The objective of each rule:

Article 1. Definitions

Rule	Objective
R21-6-101. Definitions	The objective of this rule is to provide a uniform set of definitions used throughout this Chapter.

Article 2. Licensing Agency Requirements for Foster Home Licensing Agencies

Rule	Objective
R21-6-201. Minimum Qualifications for an Applicant	The objective of this rule is to advise the licensing agency of their responsibility to ensure that an applicant’s rights are met.
R21-6-202. Professional Judgement	The objective of this rule is to define how the licensing agency will use “professional judgement”.
R21-6-203. Conflicts of Interest	The objective of this rule is to address how licensing agencies will handle conflict of interest as it pertains to the families they work with.
R21-6-204. Rights of the Applicant and Foster Parent	The objective of this rule is to establish the licensing agency’s responsibility to inform and ensure the rights of foster parents or applicants.

R21-6-205. Licensing Agency Responsibility; Application for an Initial Foster Home License	The objective of this rule is to inform the licensing agency of their responsibilities when processing an initial foster home license application.
R21-6-206. Licensing Agency Foster Home Study and Assessment	The objective of this rule is to outline the licensing agency's responsibility to conduct an assessment and complete a home study of those applying for a foster home license.
R21-6-207. Request for Additional Information During Licensing Review	The objective of this rule is to state the licensing agency's responsibility to gather and provide OLR more information as needed.
R21-6-208. Statement of Understanding	The objective of this rule is to indicate at when the licensing agency must review the Statement of Understanding with the foster parent.
R21-6-209. Verification of Equipment at Time of Placement	The objective of this rule is to state that it is the licensing agency's responsibility to ensure the foster home has the appropriate equipment.
R21-6-210. Approval of Additional Placements from Another Child Placing Agency	The objective of this rule is to establish when the licensing agency must obtain prior approval from DCS regarding the placement of children.
R21-6-211. Life Safety Inspection	The objective of this rule is to inform the licensing agency of their responsibilities as they pertain to the inspection of the foster home.
R21-6-212. Training Reporting Update	The objective of this rule is to state the agency's responsibility to update training information in DCS's electronic database.

R21-6-213. Application for a Renewal License	The objective of this rule is to outline the licensing agency's responsibilities when processing a foster home renewal application.
R21-6-214. Application or License Reinstatement	The objective of this rule is to define "reinstatement" and provisions for reinstating a foster home license.
R21-6-215. The Licensing Record	The objective of this rule is to establish the licensing agency's responsibilities and requirements of record maintenance.
R21-6-216. Amending the License	The objective of this rule is to require the licensing agency to inquire of any changes within the foster home and follow the process for amending a license.
R21-6-217. Evaluating Changes in Household Composition	The objective of this rule is to outline the licensing agency's responsibility to assess the foster home when there is a change in household composition.
R21-6-218. Routine Monitoring and Verification of Ongoing Compliance	The objective of this rule is to establish the licensing agency's monitoring responsibilities.
R21-6-219. Corrective Action Plan	The objective of this rule is to establish the licensing agency's responsibilities with monitoring corrective action plans.
R21-6-220. Notification Requirements; Unusual Incident	The objective of this rule is to establish the licensing agency's responsibility to comply with reporting incidents to the child placing agency and OLR.
R21-6-221. Allegations of Child Abuse or Neglect; Licensing Complaints	The objective of this rule is to identify the licensing agency's responsibilities in reference to complaints and investigations of a foster home.

R21-6-222. Waiver of Non-Safety Licensing Requirements for Kinship Care	The objective of this rule is to detail what criteria OLR will consider waiving when a kinship caregiver is applying for a foster home license.
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Article 3. Licensing Requirements for Foster Parents

Rule	Objective
R21-6-301. General Requirements for Foster Parents	The objective of this rule is to provide the general criteria required of persons applying for a foster home license and general criteria required to maintain a foster home license.
R21-6-302. Requirements for Household Members	The objective of this rule is to identify the criteria required of other household members residing within the foster home.
R21-6-303. Training Requirements	The objective of this rule is to inform foster parents of their training requirements.
R21-6-304. Life Safety Inspection	The objective of this rule is to indicate the foster parent's and applicant's responsibility to comply with inspections, per Title 21, Chapter 8, of the foster parent's or applicant's home.
R21-6-305. Nurturing Responsibilities	The objective of this rule is to describe the nurturing responsibilities the foster parent is expected to provide.
R21-6-306. Supervisory Responsibilities;	The objective of this rule is to address the care and supervision the foster parent is expected to provide.
R21-6-307. Reasonable and Prudent Parenting Standard	The objective of this rule is to describe the foster parent's responsibility to promote normalcy for children placed in their care.
R21-6-308. Positive Discipline	The objective of this rule is to explain to foster parents the Department's expectations of effective discipline for foster children.

R21-6-309. Capacity Requirements	The objective of this rule is to specify the number of children that can be cared for at the same time within the foster home.
R21-6-310. Sleeping Arrangements	The objective of this rule is to detail the acceptable sleeping arrangements for foster children.
R21-6-311. Bedrooms, Beds and Bedding	The objective of this rule is to inform foster parents of the bedroom and sleeping materials a foster parent must make available to a foster child.
R21-6-312. Meals and Nutritional Needs	The objective of this rule is to inform foster parents of their responsibility to meet a foster child's meal and nutritional needs.
R21-6-313. Hygiene and Daily Needs	The objective of this rule is to establish the foster parent's responsibility to meet a foster child's hygiene and daily needs.
R21-6-314. Health and Medical Care	The objective of this rule is to establish the foster parent's responsibility to ensure the foster child's health needs are met.
R21-6-315. Smoking Restrictions	The objective of this rule is to state the foster parent's responsibility not to expose a foster child to second hand smoke at the foster home or in a vehicle used by the foster parent to transport a foster child.
R21-6-316. Transportation Responsibilities	The objective of this rule is to explain the foster parent's responsibilities related to transporting foster children.
R21-6-317. Education and Development	The objective of this rule is to inform the foster parent of their responsibilities as they pertain to the foster child's education.
R21-6-318. Religion and Cultural Practices	The objective of this rule is to establish that a foster parent is to respect a foster child's religious and cultural practices.
R21-6-319. Recreation	The objective of this rule is to inform a foster parent of their responsibility to address a foster child's recreational needs.
R21-6-320. Out- of-State Travel	The objective of this rule is to inform a foster parent of their notification responsibilities when taking a foster child out-of-state.
R21-6-321. Rights of a Foster Child	The objective of this rule is to outline the foster child's rights.

R21-6-322. Confidential Information	The objective of this rule is to explain to the foster parent what information about the foster child is to be kept confidential. It also explains the foster parent's responsibility to protect and maintain the confidentiality of the foster child's records.
R21-6-323. Information and Records to be Provided to the Foster Parent	The objective of this rule is to detail the information a child placing agency must provide a foster parent upon placement of a dependent child and establish how the foster parent shall not use the information.
R21-6-324. Records Maintained by the Foster Parent	The objective of this rule is to inform foster parents of their responsibilities in maintaining records for foster children.
R21-6-325. Participation in the Service Team	The objective of this rule is to establish that a foster parent is to participate and implement plans developed by the service team.
R21-6-326. Notification Requirements; Unusual Incident	The objective of this rule is to inform foster parents of the procedures and timeframes for reporting incidents to the child placing agency and the licensing agency.
R21-6-327. Notification Requirements; Home or Household Change	The objective of this rule is to explain to the foster parent circumstances or changes that they must report to the licensing agency, when it requires prior authorization, and consequences for failure to report.
R21-6-328. Emergency and Disaster Plan	The objective of this rule is to detail the foster parent's obligation to develop, maintain, and inform a foster child of the emergency and disaster plan.
R21-6-329. Special Provisions for Respite Care	The objective of this rule is to detail requirements for those only providing respite care.
R21-6-330. Special Provisions for an In-Home Respite Foster Parent	The objective of this rule is to detail requirements for those only providing in-home respite care.

R21-6-331. Requirements for Certification to Provide for Specialized Services	The objective of this rule is to inform foster parents of the requirements needed for certification to provide specialized services.
R21-6-332. Placement of a Child with a Developmental Disability in a Foster Home	The objective of this rule is to provide the foster parent information needed when a child with a developmental disability is placed in a foster home.

Article 4. The Licensing Process for Foster Parents

Rule	Objective
R21-6-401. Minimum Qualifications to Apply for a License	The objective of this rule is to establish the minimum requirements for a person to apply for a foster home license.
R21-6-402. Rights of the Applicant and Foster Parent	The objective of this rule is to outline the rights of an applicant or foster parent.
R21-6-403. Application for an Initial License	The objective of this rule is to establish the contents required with an initial application for a foster home license.
R21-6-404. Types of Licenses	The objective of this rule is to provide information on the types of licenses OLR processes and specify the information presented on the foster home license.
R21-6-405. Home Study and Assessment	The objective of this rule is to establish the applicant's or foster parent's requirement to cooperate with assessments.
R21-6-406. The Licensing Decision	The objective of this rule is to describe OLR's process in making a licensing decision.

R21-6-407. Licensing Timeframes	The objective of this rule is to inform of the timeframes for OLR to review and render a licensing decision.
R21-6-408. Licensing Limitations	The objective of this rule is to define and provide clarification regarding the parameters and validity of the foster home license. It also clarifies the criteria OLR will utilize to license a married individual as a single applicant.
R21-6-409. Training Reporting Update	The objective of this rule is to inform the foster parent of their responsibility to complete required training and the consequences if they fail to complete the required training.
R21-6-410. Amending the License	The objective of this rule is to provide the process and information required for amending a foster home license.
R21-6-411. Addition of Household Members	The objective of this rule is to inform the foster parent of their responsibility to report any changes in household composition.
R21-6-412. Application for a Renewal License	The objective of this rule is to inform the foster parent of the licensing renewal process.
R21-6-413. Application for License Reinstatement	The objective of this rule is to provide information on the reinstatement process when a person wishes to reinstate their foster home license.
R21-6-414. Licensing Actions	The objective of this rule is to outline the actions OLR may take regarding a foster home license application or a foster home license.
R21-6-415. Routine Monitoring and Verification of Ongoing Compliance	The objective of this rule is to establish the foster parent's responsibility to cooperate with OLR's monitoring and maintain compliance with licensing requirements.
R21-6-416. Corrective Action Plan	The objective of this rule is to describe the corrective action plan process.
R21-6-417. The Appeal Process	The objective of this rule is to notify the applicant or foster parent of their appeal rights and process of appealing an adverse licensing action taken by OLR.

R21-6-418. Allegations of Abuse or Neglect; Licensing Complaints	The objective of this rule is to inform foster parents of their responsibility to report allegations of abuse or neglect, their responsibility to cooperate with OLR, and OLR possible actions.
R21-6-419. Waiver of Non-Safety Licensing Requirements for Kinship Care	The objective of this rule is to provide information on the waiver process and information concerning kinship families that do not meet all the licensing standards. It also clarifies that health and safety related requirements will not be waived.

3. **Are the rules effective in achieving their objectives?** Yes X No

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

Rule	Explanation

4. **Are the rules consistent with other rules and statutes?** Yes X No

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation

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

If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issue.

Rule	Explanation

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

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

Rule	Explanation
R21-6-410 B. 7.	#7 incorrectly says the foster parent shall work with the licensing agency to modify a license when an adopted child is born. ("Addition of a household member; including the

	birth of an adopted child;”) This should be corrected to say “ ... the birth of a child or adoption of a child.”
R21-6-308	The heading of this Section is “Positive Discipline”; however, rules in this Section are addressing discipline and behavior management.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes X No

The Department of Child Safety (DCS) has not received written criticisms of the rules subject to this report since they were finalized under exempt rulemaking and became effective on January 24, 2016. During the rulemaking activities in 2015, the Department received public comments through public meetings and through an on-line survey. Comments received included concerns with out-of-state travel, number of children a home could be licensed for, bedroom arrangements, licensing, training update, amendments, investigation timeframes, and requirements for the certification of specialized services. The Department reviewed and incorporated comments where applicable in the final rule package in 2015.

8. **Economic, small business, and consumer impact comparison:**

The Department adopted the rules in Title 21, Chapter 6 under its own title (Title 21. Child Safety) on January 24, 2016. There were no economic, small business and consumer impact statements prepared as part of the exempt rulemaking.

The DCS Office of Licensing and Regulation (OLR) oversees the licensing and regulation of foster homes and the foster home licensing agencies. Foster home licensing agencies are private organizations generally contracted with the Department to oversee the licensing of foster care providers. The Foster Home Licensing Unit within OLR is responsible for the following functions:

- Support and provide technical assistance to foster home licensing agencies, foster parents, and foster home license applicants as needed or requested.
- Complete an Administrative Review of application packets received within timeframes set in Chapter 6 and Arizona statute. Types of application packets include initial, renewal, and amendment applications for family foster home licensing or in-home respite licensing.
- Ensure application packets comply with the rules in Chapter 6 and Arizona statute. Request additional information as necessary.
- Complete a Substantive Review of the application and application packet within timeframes set in Chapter 6 and Arizona statute. A substantive review consists of a review of the information provided and determination whether to issue an initial, renewal, or amended foster home license (as applicable) for applications for family foster home licensing or in-home respite licensing.
- Process concerns related to foster parents or in-home respite foster parents. Process includes review and assessment of the concern or complaint received, determine if a licensing violation occurred, OLR’s

response to the concern received, and monitor any actions required of the foster parent, in-home respite foster parent, or the licensing agency to address any licensing violations.

- Provide oversight. This includes conducting quarterly visits to the licensing agencies to provide support and monitoring.
- Conduct background checks in the DCS database and process background checks related to the Adam Walsh Act for all applicants and other adults living in the foster home or an in-home respite provider.
- Review requests to increase the number of foster children a foster parent could provide care to beyond the licensing parameters, also known as overcapacity requests. OLR provides this support in order to preserve sibling connections to children placed in out-of-home care by placing siblings together in a licensed foster home or in order to place children with a foster family with whom they have a prior relationship.
- Maintain the electronic database established for housing all foster home licensing applications, in-home respite licensing applications, and related information.

Population affected

The cost bearers and beneficiaries of the rules in this Chapter are:

- businesses that contract with DCS,
- businesses contracting with other entities to provide aid in the placement of children that cannot remain in their natural home,
- general public who may wish to apply for a foster home license,
- children in out-of-home care,
- parents of children in out-of-home care, and
- DCS.

The cost bearers and beneficiaries benefit from these rules as the rules provide foster home licensing agencies, applicants, foster parents, and in-home respite providers information about what is expected of them and the licensing process. Foster home licensing agencies are not charged a fee for contracting with DCS. Foster home applicants are not charged a fee for applying, renewing or amending their license.

The Department has contracted 27 Foster Home Licensing Agencies. On June 30, 2018, there were 4,377 licensed foster homes. Foster care providers are expected to comply with the articles in this Chapter as well as the rules in Chapter 8 of this Title. As mentioned, the Foster Home Licensing Unit, processes foster home licensing applications. This table reflects the quantity of applications received for the 2018 calendar year.

Criteria	Initials		Renewals		Amendments		Withdrawals	Totals
	Family Foster	In-Home Respite	Family Foster	In-Home Respite	Family Foster	In-Home Respite		
Applications rec'd	1492	9	1480	4	3085	2		6072
Applications approved	1492	9	1509	4	3043	2		6059
Applications denied	0	0	2	0	33	0		35
Applications rec'd & then withdrawn	16	1	15	0	36	0		68
Applications closed (applicant did not meet timeframes)	15	0	12	0	3	0		30
Foster homes closed (withdrawals)							2144	2144
Revocations initiated								31
Overall Total								14439

Employees

The Office of Licensing and Regulation (OLR) consists of the Administrator, Policy Specialist, Quick Connect (database) Project Coordinator, Administrative Assistant, and three (3) specialized units. One (1) of these units is the Foster Home Licensing unit, which enforces and monitors the rules in Chapter 6. The Foster Home Licensing Unit consists of 11 staff. This unit is comprised of one (1) Manager, three (3) Team Leads, and seven (7) Foster Home Licensing Liaisons.

Funding

The following funding information applies to OLR as a whole and is not specific to the functions of the Foster Home Licensing unit. In FY 19, DCS budgeted \$3.2M to OLR operations. This included 34 FTE, supplies, fingerprinting, overhead, etc. The funding source is both state General Fund and Federal funds.

The Department also incurred \$6.4M of expenses related to completing licenses from the DCS provider network. This is budgeted within the Foster Home Recruitment, Study and Supervision legislative line item: \$32,756,000. Funding sources are both state General Fund and Federal funds.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes ___ No X

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

This is the first review of the rules in Title 21, Chapter 6, Articles 1 through 4. The rules in this Chapter were made by final exempt rulemaking at 21 A.A.R. 3479, December 25, 2015 and became effective January 24, 2016.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Department believes that current rules pose the minimum cost and burden on business, the regulated public and on the general public. Any costs related to the implementation of these rules are associated with monitoring licensees and ensuring that they are abiding by these rules as described in the economic, small business, and consumer impact statement. Additionally, foster home license applicants are not charged a fee to operate a licensed foster home. In fact, those who are granted a license are reimbursed for the services they provide via federal and state funds. It is the Department's belief that any cost associated with the rule are offset by the greater benefit of ensuring the safety and protection of Arizona children.

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

Corresponding federal laws are: 42 U.S.C. 622, 45 U.S.C. 623, 45 U.S.C. 671, 45 U.S.C. 672, 45 U.S.C. 675, U.S.C. 5113, and 45 CFR 1356.30. The rules are not more stringent than federal law.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

An individual license is required to have a foster home. Foster home licenses are exempt under A.R.S. § 41-1037 and do not require a general permit.

14. **Proposed course of action**

The Department has reviewed the current rules and does not plan any additional rulemaking activity for these rules at this time.

ARIZONA DEPARTMENT OF CHILD SAFETY

Five-Year-Review Report

Title 21. Child Safety

Chapter 8. Department of Child Safety - Foster Home and Child Welfare Agency Facility Safety

Article 1. Life Safety Inspections

November 2019

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 8-453(A)(5)

Specific Statutory Authority: A.R.S. §§ 8-504, 8-505, and 8-509

2. The objective of each rule:

Rule	Objective
R21-8-101. Definitions	The objective of this rule is to promote and facilitate uniform understanding of terminology used in this Article.
R21-8-102. Application	The objective of this rule is to identify the entities regulated as they apply to this Article.
R21-8-103. Frequency of Inspection and Inspection Area	The objective of this rule is to clarify when an inspection is conducted and identify areas inspected.
R21-8-104. General Condition and Cleanliness of the Premises	The objective of this rule is to establish the minimum standards for cleanliness and the general condition of a setting used to provide regulated care.
R21-8-105. Safeguarding of Hazards	The objective of this rule is to identify the safeguards providers are required to implement to reduce the risk of hazards.
R21-8-106. Weapons and Firearms	The objective of this rule is to establish the standards foster parents are required to follow pertaining to weapons and firearms.
R21-8-107. Animals	The objective of this rule is to identify the requirements a care provider must follow when there is an animal in the home or premises.
R21-8-108. Storage of Medication	The objective of this rule is to establish the requirement for the storage and safeguarding of all medication.

R21-8-109. Safe Appliances	The objective of this rule is to inform the care provider of their requirement to ensure the availability of specific appliances within a regulated setting, and to ensure such appliances are in safe working order.
R21-8-110. Electrical Safety	The objective of this rule is to inform the care provider of their responsibility to ensure electrical systems are appropriately used and are in safe working order.
R21-8-111. Water and Plumbing Requirements	The objective of this rule is to ensure the availability of specific plumbing systems within a regulated setting, and to ensure such systems are in safe working order.
R21-8-112. Fire Safety and Evacuation Plan Requirements	The objective of this rule is to identify the care provider's responsibility to establish fire safety precautions, equipment, and evacuation plans and procedures.
R21-8-113. Pool Safety	The objective of this rule is to establish the required safeguards when there is a pool.

3. **Are the rules effective in achieving their objectives?** Yes ___ No X

Rule	Explanation
R21-8-103. Frequency of Inspection and Inspection Area	R21-8-103(B) (3) provides a narrow timeframe for the Department and applicants to complete renewal Life Safety Inspections. In order for the renewal process to flow more effectively, the timeframe in this rule should be changed to four (4) months from three (3) months to allow DCS OLR to conduct inspections, along with possible re-inspections, prior to the expiration of the license.
R21-8-106. Weapons and Firearms	R21-8-106(B) allows foster parents, who are also in law enforcement, to request an exception to life safety standards as it pertains to carrying and storage of firearms on the premises. OLR has received verbal and one written feedback that the provisions in rule are not agreeable by some of the foster parents who contend that the Department's safety objectives can still be achieved if the rules were amended to allow firearms and ammunition to be stored in the same container.

4. **Are the rules consistent with other rules and statutes?** Yes ___ No X

Rule	Explanation
R21-8-113. Pool Safety	The pool fencing requirements under the rules in Title 6, Chapter 5, Article 74, requires all residential group care facilities and shelters with a pool to have a fence whereas this Chapter does not have this requirement. Additionally, the age of the children the facility/shelter provide services to and in which certain fencing criteria must be applied differs between Article 74 (younger than age 6) and this Article (younger than age 7).

	The rules in the Article also contains more fencing criteria than those specified in Article 74 and contains criteria not applicable to a residential group care facility. The Department relies on the directives outlined in Article 74 in addition to the criteria set forth in this Article. The Department proposes to amend the rule to clarify applicability.
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5. **Are the rules enforced as written?** Yes ___ No X

Rule	Explanation
R21-8-111. Water and Plumbing Requirements	R21-8-111(A) and (B) requires the provider have a continuous source of safe drinking water. The rule also requires the testing of non-municipal water. DCS OLR currently requests testing for five (5) specific contaminants. If the test results identifies one of those contaminants in the water, DCS OLR does not classify it as a violation; however, documents it as a concern that requires rectifying. DCS OLR proposes to amend this rule to include that when testing reveals unacceptable levels of contaminants, the facility or provider will be required to submit a plan for obtaining safe drinking water and such plan would require DCS OLR's approval.

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

Rule	Explanation
R21-8-113. Pool Safety	R21-8-113(B)(2)(c) states that the openings for all vertical bars or wooden slats of a pool fence must measure less than 4 inches; however, the orientation of such components is irrelevant as this rule would also apply to horizontal components placed between 45 and 60 inches from the bottom of the fence. DCS proposes to amend the rule by removing the orientation of the components.
R21-8-113. Pool Safety	R21-8-113(A) and (B) are not clear on to whom and how the pool safety rules apply. DCS OLR proposes to amend the pool safety rules to clarify who these rules apply to and clearly identify what applies to family foster home and what applies to a residential group care facility.
R21-8-111. Water and Plumbing Requirements	The terms "continuous" and "non-municipal" are not clear. DCS OLR proposes to amend the rules by adding a definition for these terms. The term "contaminants" is also unclear and DCS OLR proposes to clarify this term in the DCS OLR policies and procedures.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes X No ___

The rules under this Chapter became effective on January 24, 2015 under exempt rulemaking. During the rulemaking activities in 2015, the Department received public comments through public meetings and through an on-line survey. Comments received during the exempt rulemaking are included in the Notice of Final Exempt Rulemaking published in 21A.A.R. 3517, December 25, 2015. Comments were also received during the public

comment period when the rules were amended and are included in the Notice of Final Rulemaking published in 23 A.A.R. 3548, December 29, 2017. Two additional written criticisms have been received this year.

Date	Received from	Comment and DCS response
September 18, 2019	Jarrod Winfrey	<p>Mr. Winfrey disagrees with the rule that requires firearms and ammunition be stored separately. Mr. Winfrey believes that given the nature of his job as a certified police officer, an alternative plan should be considered.</p> <p>DCS OLR worked on a safety plan with Mr. Winfrey. OLR works with families who are in law enforcement and with licensing agencies to determine if the active law enforcement person must carry their firearm at all times, on or off duty.</p>
April 23, 2019	Brandon Barber	<p>Mr. Barber disagrees with DCS OLR's interpretation of the rules pertaining to the pool fence, in particular, the space between bars (vertical and horizontal). Mr. Barber made modifications to the original pool fence by adding horizontal slats at the top of the fencing. Barber believes that with the modifications, his pool fence meets the "intent and literal verbiage of the pool fence regulations."</p> <p>DCS OLR conceded that the fence met the regulatory requirements; however, noted concerns with the material used. DCS OLR noted that the foster home licensing agency will inspect the integrity of the pool fence during routine monitoring.</p>

8. Economic, small business, and consumer impact comparison:

DCS Office of Licensing and Regulation (OLR) is authorized by Arizona Revised Statutes to license foster home and child welfare agencies. The purpose of regulating DCS foster homes and child welfare agencies is to protect vulnerable children receiving services through the establishment and enforcement of safe standards for care. A.R.S. § 8-504 requires the Department to inspect child welfare agencies and foster homes for sanitation, fire, and other actual and potential hazards. A component of licensing is the inspection of foster homes and the facilities under a child welfare agency which are used for the provision of services. The Life Safety Inspection Unit is a unit within DCS OLR which schedules and conducts these inspections. In addition to initial licensing, the Arizona Administrative Code also requires periodic inspections of the foster home and child welfare agency for renewal licensure, relocation of licensed settings, and for significant new construction. Inspections directly impact the health and well-being of clients.

The persons directly affected by, bear the costs of, or directly benefit from the rules includes the following: Child Welfare Agencies (Group homes, Emergency Shelters); Foster Home Licensing Agencies; Foster Care

Providers (Foster Homes); Children in out-of-home care; and DCS OLR. DCS contracts with Foster Home Licensing Agencies to manage the licensing process for Arizona's licensed foster care providers. The agencies, as contractors, are expected to ensure the foster care provider complies with this Chapter in between OLR inspections of the foster homes and to verify foster care providers correct deficiencies OLR identified. Foster care providers and child welfare agencies as a residential group care facility must comply with this Chapter.

DCS OLR

DCS OLR consists of the Program Administrator, Policy Specialist, Quick Connect (database) Project Coordinator, three (3) administrative support staff, and three (3) specialized units. One (1) of these units is the Life Safety Inspection Unit, which enforces and monitors the rules in Chapter 8. The Life Safety Inspection Unit consists of six (6) full-time employees: one (1) Manager, one (1) Scheduler, and four (4) Life Safety Inspectors. This unit is responsible for the following functions:

- Schedules initial, renewal, amendment, and new construction Life-Safety Inspections for foster homes
- Schedules initial, renewal, amendment, and new construction Life Safety Inspections for residential group care facilities
- Provides technical assistance to foster parents, foster home licensing agencies, and residential group care facilities
- Provides trainings to foster home licensing agencies at least once per quarter
- Provides consultations upon request
- Conducts Life-Safety inspections of foster homes and residential group care facilities
- Schedules and conducts follow up inspections of foster homes and residential group care facilities, as needed
- Works with foster home licensing agencies, foster homes, and residential group care facilities when deficiencies are discovered

The Life Safety Inspection Unit completed 3,125 Life Safety Inspections between 09/21/2018 and 09/21/2019. This number includes inspections for initial and renewal applications, provider or agency relocations, consultations, new construction and pool fence inspections.

Funding

The following funding information applies to OLR as a whole and is not specific to the functions of the Life-Safety Inspection Unit. In FY 19, DCS budgeted \$3.2M to OLR operations. This included 34 FTE, supplies, fingerprinting, overhead, etc. The funding source is both state General Fund and Federal funds. DCS OLR does not charge a fee for conducting inspections per this Chapter.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes No

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

This is the first review of the rules in Title 21, Chapter 8, Article 1. The rules in this Chapter were made by final exempt rulemaking, published in 21 A.A.R. 3517, December 25, 2015 and became effective in January 24, 2016. The rules, specific to R21-8-112 and R21-8-113, were amended and became effective on December 12, 2017, published in 23 A.A.R. 3548, December 29, 2017.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Department believes that the current rules pose the minimum cost and burden to the persons regulated by these rules. It is the Department's belief that any cost associated with the rules are offset by the greater benefit of ensuring the safety and protection of Arizona children. The Department does not charge a fee for conducting the inspections referenced in this Article.

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

Corresponding federal laws are: 42 U.S.C. 671. The rules are not more stringent than federal law.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

The Department has determined that A.R.S. § 41-1037 does not apply to these rules, because these rules do not require the issuance of a regulatory permit, license, or agency authorization.

14. **Proposed course of action**

The Department plans to request a moratorium exemption from the Governor’s Office in accordance with Executive Order 2020-02 and to amend rules to address the concerns identified in this five-year-review report. The Department plans to complete and submit rulemaking for Council’s review by April 2020. This timeframe will allow the Department to request an exemption to the moratorium, dedicate the time needed to draft amendments, and engage stakeholders in providing informal as well as formal feedback prior to submission to Council.