



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

Article 69.

Child Placing Agency Licensing Standards

I. INTRODUCTION

Prior to May 29, 2014, the rules in Article 69 were used by the Division of Children, Youth, and Families (DCYF) within the Arizona Department of Economic Security. The rules were adopted on August 31, 1978

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 69 for child placing agency licensing were transferred to the new agency. Within DCS, the Office of Licensing and Regulation, (OLR) administers these rules. Arizona Laws, 2014, First 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rules and orders that were adopted by the Department of Economic Security continue to be in effect until superseded by administrative action by the Department of Child Safety.”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, First 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 Placing 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 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 comments received were discussed. Due to the degree of complexity of the subject matter involved with the Department’s twenty rulemakings accomplished during the exempt period, the rules for child placing 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. The Department opened a docket on April 8, 2016 announcing the beginning of rulemaking for the Child Welfare Agency rules, which include the Child Placing 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.

Article 69. Child Placing Agency Licensing Standards

A Child Placing Agency, as defined in R6-5-6903(F), is a child welfare agency that is authorized in its license to place children in foster homes.

As of 2016, there were 38 agencies licensed by the Department to provide child placing services in the state of Arizona. The rules in Article 69 pertain to the formation, and ongoing operation of Child Placing Agencies.

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 69 are necessary, because they protect vulnerable children in care. There are currently over 19,000 children placed in 4,350 licensed foster homes and 112 residential group care facilities. In 2015, the Department received over 600 reports, as defined in A.R.S. § 8-455(D), of alleged child abuse or neglect concerning children placed in these foster homes and facilities. The Department received over 300 licensing concerns about these foster homes and facilities during 2014. The rules in Article 69 provide the standards for licensing specifically, Child Placing Agencies that place children in these foster homes and facilities.

The rules in Article 69 are also necessary in order to provide businesses with the information required to license and operate a Child Placing Agency in the state of Arizona. There are currently 38 licensed Child Placing Agencies in the state of Arizona.

Finally, the rules in Article 69 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 Placing Agencies are responsible to uphold.

R6-5-6901 Objectives

The objective of this rule is to establish the objective of Article 69, which is to establish licensing and operating standards to promote quality services for children and unmarried mothers whose needs are not adequately met in their family homes.

R6-5-6902 Authority

The objective of this rule is to establish the specific authority for the rules contained in Article 69.

R6-5-6903 Definitions

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

R6-5-6904 Licensing Requirements

The objective of this rule is to establish the initial licensing requirements and the initial licensing procedure for a Child Placing Agency in the state of Arizona. The rule also establishes the criteria for issuance of a provisional or regular license. The rules define the Department's responsibilities of "supervision" under A.R.S. § 8-503.

R6-5-6905 Denial, Suspension, or Revocation of a License

The objective of this rule is to clarify for the public the circumstances under which the Department may deny, suspend, or revoke a child placing agency license. This rule also informs the public of the Department's requirement to notify a licensee in writing of an adverse licensing action, and the opportunity for the licensee to request an administrative hearing.

R6-5-6906 License Renewal Requirements

The objective of this rule is to establish specifications of what is needed to renew a Child Placing Agency license and to inform the public of the circumstances of when a license renewal is required.

R6-5-6907 Standards for Licensing and Operating a Child Placing Agency

The objective of this rule is to establish and inform the public of the criteria for operating a licensed Child Placing Agency. Categories of requirements covered include, staffing, organizational structure, financing, reporting, personnel, supervision of children in care and foster homes, provision of services, and facility standards.

R6-5-6908 Confidentiality

The objective of this rule is to establish the requirements for licensed Child Placing Agencies for using and safeguarding the confidential information of children.

R6-5-6909 Civil Rights

The objective of this rule is to establish the requirement of Child Placing Agencies to adhere to the Department of Economic Security's rules in regard to civil rights.

R6-5-6910 Fair Labor Standards Act

The objective of this rule is to establish the requirement for the Child Placing Agency's employee hiring and compensation policies to comply with the Fair Labor Standards Act.

C. EFFECTIVENESS

The Department acknowledges that the rules in Article 69 are no longer applicable to the Department of Economic Security and need to undergo revision and be adopted into Title 21, Child Safety, of the Arizona Administrative Code.

Although most of the general requirements of Article 69 for Child Placing Agency licensing are still accurate, some definitions, citations and references are outdated and are not consistent with state law, other administrative rules, and current policy and practice. The Department intends to address these issues and concerns with the new Child Placing Agency licensing rules being developed under the regular rulemaking process.

R6-5-6901. Objectives is effective in informing the public of the subject and parameters of Article 69, but may not conform to current rule writing structure and could be removed.

R6-5-6902. Authority is ineffective, because statutory authority should be addressed in authority notes rather than in rule. This rule could be removed.ⁱ

R6-5-6903. Definitions can be made more effective by revising definitions to match current statute and removing references to the Arizona Department of Economic Security, such as "Division", and replacing them with those that refer to the Department. Other examples for improvements include reviewing the definitions for outdated and inconsistent terms, such as, "Caseworker," "Casework Supervisor," "Receiving Foster Home," and "Special Foster Home" to determine whether they require updating and conforming to the rules promulgated last year. The definition of "foster home" is still correct, but the citation is now A.R.S. § 8-501(5), instead of A.R.S. § 8-501(4). In order to effectively promote a uniform understanding of terminology used for Child Placing Agency and Child Welfare Agency licensing, the Department is proposing to combine all definitions into one Article that apply to both entities in the new rules.ⁱⁱ

R6-5-6904. Licensing Requirements can be made more effective by replacing outdated procedures with updated procedures used by the Department of Child Safety's OLR to make them more understandable and easy to follow. For example, both the Fingerprints and the Consultation sections may require updating due to subsequent changes in statutes.

In addition, any changes to OLR procedures, such as the ability to submit an application electronically, will require updating.

R6-5-6905. Denial, Suspension, or Revocation of a License can be made more effective by revising the rule to reflect current adverse licensing action procedures to make them more understandable. For example, elaborating on specific reasons for revocation, denial or suspension will make this rule more understandable.

R6-5-6906. License Renewal Requirements can be made more effective by revising the rule to reflect current OLR procedures and updating citations. For example, the renewal application timeframes may require updating. In addition, this rule references R6-5-6904(E), which will be replaced under Title 21.

R6-5-6907. Standards for Licensing and Operating a Child Placing Agency can be made more effective by revising the rule to reflect the current OLR requirements, procedures, and accurate legal references for the licensing of Child Placing Agencies. For example, education and experience requirements for the positions of Executive Director, Casework Supervisor, and Consultants may need updating. The organizational requirements may not cover all types of entities that can operate a Child Placing Agency and the requirement for a Board of Directors may need to be updated to reflect other types of business structures. Financing requirements could be more detailed to make the rule clear to the applicants and the Child Placing Agencies that are currently licensed. There are outdated specific references to forms used for agency reports on statistics of children and the list of current staff members. Additional detail to assist Child Placing Agencies with the maintenance of children's case records and staff records could be provided. The types of foster care homes listed are antiquated terms and should be updated. References to rules no longer in effect needs to be updated to reflect new Department rules.

R6-5-6908. Confidentiality This rule can be made more effective by revising the rule to reflect the appropriate statutory reference for the Department in lieu of the repealed DES rule that is referenced.

R6-5-6909. Civil Rights This rule can be made more effective by revising the rule to reflect the appropriate statutory reference for the Department in lieu of the repealed DES rule that is referenced.

R6-5-6910. Fair Labor Standards Act is believed to be effective.

D. CONSISTENCY

The following rules contain outdated statutory or Administrative Code references: R6-5-6902, R6-5-6903, R6-5-6904, R6-5-6907, R6-5-6908, and R6-5-6909. The following rules would be improved by updating them to be consistent with procedures contained in the Department's Child Welfare Agencies operating Residential Group Care Facilities rules (Title 6, Chapter 5, Article 74): R6-5-6903, R6-5-6904, R6-5-6906, and R6-5-

6907. An improvement to R6-5-6907(D)(2) would be to make it consistent with any new standards contained in Title 21, Chapter 5, (Adoption Articles). Consistency for Article 69 as well as Article 74, could be obtained by combining the same requirements for both types of Child Welfare Agency licenses into one Article, and maintaining separate Articles for the unique requirements of Child Placing Agencies and Child Welfare Agencies.

E. ENFORCEMENT POLICY

The Department enforces all Article 69 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 timeframes, 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 clearer by updating citations to reflect current administrative rule, state and federal laws. These rules can also be improved by updating antiquated terms, such as "board homes," and "caseworker supervisor." 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, fingerprinting and initial licensing requirements do not reflect recent state and federal laws.

G. WRITTEN CRITICISMS

No written criticisms were received for Article 69, by the Department of Economic Security prior to May 29, 2014. During the Department's eighteen month exempt rulemaking term, the Department posted new draft rules to replace Article 69. The

Department held 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 that included the draft rules for Child Placing Agencies is included as are notes from the two public hearings held in Tucson and Phoenix.

Areas of concern included the nature of the draft requirements for a Child Placing Agency's Governing Body, the educational and experience level of financial staff and direct care staff, annual audit requirement, and whether or not these draft rules applied to foster home licensing agencies. The foster home licensing agencies, were once licensed as Child Placing Agencies by OLR, but do not provide direct care services to children. New rules in Title 21, Chapter 6, Article 2 adopted in January of 2016, now apply to the foster home licensing agencies. The draft for the new Child Placing Agency rules will provide clarification for licensed entities based upon the type of services provided.

H. ECONOMIC IMPACT COMPARISON

Prior to May 29, 2014, the Arizona Department of Economic Security administered the Child Placing Agency licensing rules in Article 69 by the DES Office of Licensing, Certification, and Regulation (OLCR). After the legislative removal of the Division of Children Youth and Families (DCYF) 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 69, as well as those for licensing Child Welfare Agencies, adoption agencies and foster homes.

After consultation with the Department of Economic Security OLCR, no Economic Impact Analysis was found in their records for the Article 69 rulemaking. The DES OLCR did not charge a licensing fee and the Department of Child Safety OLR also does not charge a licensing fee for obtaining or maintaining a Child Placing Agency license.

Child Placing Agency, as defined at R6-5-6903(F), is "a child welfare agency that is authorized in its license to place children." The Child Placing Agency can place children in a licensed foster home or facility, and a Child Welfare Agency is defined in A.R.S. § 8-501(A)(1). According to statute, a Child Placing Agency includes a state agency, a political subdivision of this state, or a person, firm, corporation, association, or organization.

Expenditures for the DCS Office of Licensing and Regulation

OLR is organized into three functional units – Licensing, Inspection, and Enforcement. Each functional unit is involved in administering Article 69. These functional units also license, inspect, and enforce the rules for Child Welfare 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, review and assess OLR 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, to date. 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

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 FIVE-YEAR REVIEW REPORT

Since the previous five-year report for Article 69, 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 69. The previous three five-year review reports for Article 69 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 Placing 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

With the amendments proposed for the new rule drafts in this report, the Department believes that the new Child Placing Agency licensing rules will impose the least burden of costs to persons regulated by these rules including paperwork, reporting, and other compliance costs, necessary to achieve the safety and well-being of children in care.

L. CORRESPONDING FEDERAL LAW

The corresponding federal law is, 42 U.S.C. § 675. The rules in Article 69 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 sections 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. The DCS OLR and rules staff are working with external partners 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 December 2016. The Department projects that the informal feedback process will conclude in late March 2017. The Department plans to submit the Notice of Final Rulemaking to the Council for consideration in July of 2017.

ⁱ For R6-5-6902, As of May 29, 2014, the general authority for the rules in Title 6, Chapter 5, Article 69, is now A.R.S. § 8-453(5) and the specific authority for having Child Placing Agency rules is A.R.S. § 8-503(A)(4)(a). Both are attached. Title 8, Chapter 4, Article 4, Child Welfare and Placement, statutes still apply to Article 69 but have not been included in this submission, unless specifically stated in the text of the rules. A.R.S. § 46-134 is a statute for the powers and duties of the Arizona Department of Economic Security and was included in this submission, but no longer applies to these rules.

ⁱⁱ For R6-5-6903(N), A.R.S. 36-501(4) is an incorrect cite. It is listed in the Arizona Revised Statutes as Title 36, “Public Health and Safety, 501 “Definitions,” (4), “Court.” The current statute defining a “medical practitioner,” is found in A.R.S. § 36-1901(48) (attached), although if used in context of these rules, may not include all professions listed and would not include a veterinarian.