

NOTICES OF EXEMPT RULEMAKING

The Administrative Procedure Act requires the *Register* publication of the rules adopted by the state's agencies under an exemption from all or part of the Administrative Procedure Act. Some of these rules are exempted by A.R.S. §§ 41-1005 or 41-1057; other rules are exempted by other statutes; rules of the Corporation Commission are exempt from Attorney General review pursuant to a court decision as determined by the Corporation Commission.

NOTICE OF EXEMPT RULEMAKING

TITLE 6. ECONOMIC SECURITY

CHAPTER 18. DEPARTMENT OF ECONOMIC SECURITY LICENSING, CERTIFICATION, AND REGULATION

[R05-328]

PREAMBLE

1. Sections Affected

Chapter 18
Article 1
R6-18-101
Article 7
R6-18-701
R6-18-702
R6-18-703
R6-18-704
R6-18-705
R6-18-706
R6-18-707
R6-18-708
R6-18-709

Rulemaking Action

New Chapter
New Article
New Section
New Article
New Section
New Section

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 41-1954(A)(3)

Implementing statute: Laws 2004, Chapter 199, Section 3; A.R.S. § 41-1954(A)(1)(i)

3. The effective date of the rules:

October 24, 2005

These rules will be effective 60 days after filing with the Office of Secretary of State, under A.R.S. § 41-1032.

4. A list of all previous notices appearing in the *Register* addressing the exempt rule:

None

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

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6. An explanation of the rule, including the agency’s reasons for initiating the rule, including the statutory citation to the exemption from regular rulemaking procedures:

These rules address home inspections for foster homes, developmental homes, child welfare group homes, and child welfare shelters licensed or applying for licensure by the Department of Economic Security, Office of Licensing, Certification, and Regulation (OLCR). These rules also apply to home and community based services for individuals with developmental disabilities, as specified in Title 6, Chapter 6, Article 15.

The Department is adopting these rules under an exemption from regular rulemaking procedures under Laws 2004, Chapter 199, Section 4.

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

Not applicable

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

Not applicable

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

Not applicable

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

Not applicable

11. A summary of the comments made regarding the rule and the agency response to them:

Comments	Agency Response
Swimming pool/spa requirements should make an allowance for covers or other forms of protection in lieu of a fence.	This comment was taken into consideration, but the agency determined that it would represent a substantive change from the current requirements and should only be attempted in the formal rulemaking process.
The Article should include a fire drill requirement for programs serving a large number of clients, such as DDD day programs and shelters for children.	A requirement for quarterly fire drills in programs providing care to six or more individuals has been added.
The Article should allow for double-key lock on exit doors to allow care providers to protect against intruders.	After consulting with the State Fire Marshall’s Office, the rule was altered to allow for a double-keyed lock under specific circumstances.
Ramps should be required to have slip resistant surfaces.	This recommendation was incorporated into the Article.
Refrigerated medication should be locked without restricting access to refrigerated food.	This recommendation was incorporated into the Article.
Child welfare programs have traditionally been required to double lock medications.	This recommendation was incorporated into the Article.
A carbon monoxide detector should be required in settings with gas appliances.	This recommendation was incorporated into the Article.
Play pools, spas, and fountains should not be required to have the same rescue equipment required for pools.	This recommendation was incorporated into the Article.
The rule on rabies vaccinations should be applied to cats and to other animals, in addition to dogs.	This recommendation was considered, however, Arizona Revised Statutes do not require rabies vaccinations for any animals other than dogs.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

13. Incorporations by reference and their location in the rules:

None

14. Was this rule previously made as an emergency rule?

No.

15. The full text of the rules follows:

TITLE 6. ECONOMIC SECURITY

**CHAPTER 18. DEPARTMENT OF ECONOMIC SECURITY
LICENSING, CERTIFICATION, AND REGULATION**

ARTICLE 1. DEFINITIONS

Section

R6-18-101. Definitions

ARTICLE 7. LIFE-SAFETY INSPECTION

Section

R6-18-701. Application
R6-18-702. General Condition and Cleanliness of the Setting
R6-18-703. Safeguarding of Hazards
R6-18-704. Storage of Medication
R6-18-705. Safe Appliances
R6-18-706. Electrical safety
R6-18-707. Plumbing Requirements
R6-18-708. Fire Safety
R6-18-709. Pool Requirements

ARTICLE 1. DEFINITIONS

R6-18-101. Definitions

1. “Care provider” means a person licensed or certified to provide care or supervision in a home or program that is regulated by OLCR.
2. “Firearm” means a handgun, pistol, revolver, rifle, shotgun, or other weapon that is designed to expel a projectile by the action of an explosive.
3. “Hazard” means a condition or situation that may cause or result in physical injury or illness to a child or vulnerable adult.
4. “Individual receiving care” means a child or adult who receives or is eligible for the services listed in R6-18-701.
5. “Life-Safety Inspection” means an examination of the premises by OLCR to verify compliance with standards intended to safeguard children and vulnerable adults from fire hazards and from other hazardous conditions.
6. “Lock” means a device operated by a key, combination, magnet, or keycard to safeguard medications, swimming pools, and highly toxic substances.
7. “Medication” means both prescription and over-the-counter remedies approved as drugs by the U.S. Food and Drug Administration (FDA).
8. “Mobile home” means a trailer that is mounted on wheels or a platform with utility connections exposed under the trailer.
9. “OLCR” means the Office of Licensing, Certification, and Regulation, which is based in the Arizona Department of Economic Security.
10. “Pool” means any natural or man-made body of water that:
 - a. Could be used for swimming, recreational, or decorative purposes;
 - b. Is greater than 18 inches in depth; and
 - c. Includes swimming pools, spas, hot tubs, fountains, and fish-ponds.
11. “Safeguard” means to take reasonable measures to eliminate the risk of harm to an individual receiving care. Where a specific method is not otherwise prescribed in this Article, safeguarding may include:
 - a. Locking up a particular substance or item;
 - b. Putting a substance or item out of reach;

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- c. Erecting a barrier that prevents an individual receiving care from reaching a particular place, item, or substance;
- d. Using protective safety devices; or
- e. Providing supervision.
- 12. “Setting” means:
 - a. The home or building used to provide care or supervision; and
 - b. The surrounding property and buildings that are owned, leased, or controlled by the care-provider.
- 13. “Skirting” means the barrier around the base of a mobile home that is intended to protect utility connections from damage or unauthorized contact.
- 14. “Slip-resistant surface” means the flooring provides friction to help prevent falls when the surface is wet. A slip resistant surface may be achieved by rippling or corrugating the surface, applying textured strips, installing a secured carpet, using rubber mats, and other similar measures.
- 15. “Trigger locked” means a firearm has been rendered temporarily or permanently inoperable by blocking the firing or discharge mechanism for the firearm with a locked device.
- 16. “UL Approved” means an electrical device bears the safety certification mark of a recognized testing laboratory, such as UL (Underwriters Laboratories) or ETL (Electrotechnical Laboratory).

ARTICLE 7. LIFE-SAFETY INSPECTION

R6-18-701. Application

This Article applies to:

- 1. Foster homes, regulated under Title 6, Chapter 5, Article 58;
- 2. Adult developmental homes, regulated under Title 6, Chapter 6, Article 11;
- 3. Child developmental foster homes, regulated under Title 6, Chapter 6, Article 10;
- 4. Child welfare agencies operating residential group care facilities and shelter care facilities regulated under Title 6, Chapter 5, Article 74, but not outdoor experience programs; and
- 5. Settings providing home and community based services for individuals with developmental disabilities, regulated under Title 6, Chapter 6, Article 15.

R6-18-702. General Condition and Cleanliness of the Setting

The care provider shall ensure:

- 1. The interior and exterior of the setting are maintained in good repair and do not constitute a hazard. Damage that constitutes a hazard includes:
 - a. Broken glass;
 - b. Surfaces that are rusted, have sharp or jagged edges, or have nails protruding;
 - c. Holes in walls, ceilings, or floors; or
 - d. Broken furniture, fixtures, appliances, or equipment.
- 2. Play areas and therapy equipment are in good repair.
- 3. The setting is clean to the degree that the condition does not constitute a hazard. Conditions that constitute a hazard include rotting food, stale or accumulated urine or feces, or an accumulation of mold.
- 4. Garbage is removed from the setting at least once each week.
- 5. The setting and outside play areas are free of insect and rodent infestation, or the setting has an ongoing system to eliminate insects or rodents.
- 6. Water in a pool on the premises is maintained, is not stagnant, and is clear enough to see through the water to the bottom surface of the pool.

R6-18-703. Safeguarding of Hazards

The care provider shall ensure:

- 1. Highly toxic substances and materials are safeguarded in locked storage. Highly toxic substances include gasoline, lighter fluid, pesticides, radiator fluid, drain cleaner, ammonia, bleach, spray paint, turpentine, and other substances that can cause serious bodily harm or death if improperly used.
- 2. Household cleaning supplies are safeguarded to prevent unsafe or improper use. Household cleaning supplies are substances that are not intended for ingestion, but generally will not cause serious bodily harm or death if improperly used. Examples of household cleaning supplies include spray cleaners, laundry detergent, furniture polish, and dishwasher detergent.
- 3. Access to personal grooming supplies is not restricted unless the case plan or service plan for an individual receiving care specifically restricts such access. Personal grooming supplies include toothpaste, hand-soap, shampoo, and deodorant.
- 4. Firearms, ammunition, and other weapons, including crossbows, stun guns, air guns, and hunting knives are safeguarded to prevent unsafe or improper use. In addition,

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- a. Firearms are unloaded, trigger locked, and kept in a locked storage container that is made of unbreakable material.
- b. Ammunition is maintained in locked storage that is separate from firearms.
5. All dogs older than 6 months have current rabies vaccination. Vaccination records are maintained in the setting.
6. Animals in the setting or on the property do not pose a hazard due to behavior or disease.
7. Ramps, bathtubs, and showers have slip-resistant surfaces.
8. Handrails and grab-bars are securely attached and stationary.
9. Skirting is intact around the base of the setting, if the setting is a mobile home.

R6-18-704. Storage of Medication

A. The care provider shall ensure:

1. Medication is maintained in locked storage, with the exception of the following:
 - a. Medication that may be accessed by an individual receiving care, as specified in that individual's case plan or service plan; and
 - b. Medication that must be readily and immediately accessible, such as an asthma inhaler or Epi-pen.
2. Medication that may be unlocked under subsection (1)(a) or (1)(b) is safeguarded to prevent improper use.
3. Medication that must be refrigerated is safeguarded in locked storage, without preventing access to refrigerated food. This may be accomplished by storing refrigerated medication in a locked box within the refrigerator.

B. Programs licensed as child welfare group homes or shelters shall safeguard medications using a double-lock system. A locked box stored inside a locked cabinet is an example of a double-lock system.

R6-18-705. Safe Appliances

The care provider shall ensure:

1. Safe and functioning appliances are available for food refrigeration and cooking, if applicable. Safe and functioning refrigerators shall maintain food at or below a temperature of 45° F.
2. Electrical lighting is available in bedrooms, living areas, and rooms used to provide services.
 - a. Lighting is sufficient to perform normal activities; and
 - b. Light sockets are equipped with light bulbs or safely covered to prevent electrical shock.
3. Adequate heating, cooling, and ventilation are available in bedrooms, living areas, and rooms used to provide services. Temperatures outside the range of 65° - 85° F are indicators of inadequate heating or cooling.
4. At least one operable telephone is available in the setting, unless the licensing authority has approved an alternative system for communication. Telephone includes cellular phones, digital phones, and phones with traditional land lines.
5. If the setting has a clothes dryer, the dryer is safely vented with a non-flammable vent hose.
6. If a portable heater is in the setting, it has a protective covering to keep hands and objects away from the heating element and, it is:
 - a. Electric;
 - b. UL Approved;
 - c. Equipped with a tip-over shut-off switch;
 - d. Placed at least 3 feet from curtains, paper, furniture, and any flammable object when in use;
 - e. Not used as the primary source for heat in the setting; and
 - f. Not used in bedrooms.
7. A carbon monoxide detector-alarm is functioning on each level of the setting that has an appliance or heating device using combustible fuel such as gas, oil, kerosene, wood, or charcoal.

R6-18-706. Electrical Safety

The care provider shall ensure:

1. Electrical cords are in good condition; no broken or frayed cords are in use.
2. Electrical panels and outlets are in good condition; no wiring is exposed, and covers are in place.
3. Extension cords are not used on a permanent basis.
4. Electrical outlets are not overloaded.
5. Major appliances are plugged directly into grounded outlets. Major appliances include refrigerators, freezers, dishwashers, stoves, ovens, washers, and dryers.
6. Mid-sized appliances, which include computers, televisions, and stereo equipment, are plugged into:
 - a. Grounded outlets; or
 - b. Power strips or surge protectors that are plugged into grounded outlets.

R6-18-707. Plumbing Requirements

A. The care provider shall ensure that a continuous source of safe drinking water is available to individuals receiving care.

B. If the setting has a non-municipal source of water, the OLCR inspector shall collect a water sample at the time of an initial inspection and may collect a sample at subsequent inspections.

1. The OLCR inspector shall submit the water sample to a state-certified laboratory for total coliform testing. The water

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- sample shall also be tested for nitrate content when care is provided to children under 2 years of age.
2. If the water sample is not within acceptable levels for safe drinking water, the care provider shall provide OLCR a signed, written statement that:
 - a. Certifies that individuals receiving care will be provided with safe drinking water, and
 - b. Describes the care provider's plan for obtaining safe drinking water.
 - C. The care provider shall ensure that the sewage disposal for the setting is functioning. If the setting has a septic tank, it shall be in good working order, with no visible signs of leakage on the ground.
 - D. The care provider shall ensure that hot water temperature in areas for bathing does not exceed 120° F.
 - E. The care provider shall ensure that at least one working toilet, wash basin, and shower or tub is available for every ten persons living or receiving care in the setting at the same time.

R6-18-708. Fire Safety

The care provider shall ensure:

1. Flammables and combustibles are stored more than 3 feet from water heaters, furnaces, portable heaters, and fireplaces, and wood-burning stoves.
2. If the setting has a working fireplace or wood-burning stove, it is protected by a fire screen.
3. A functioning fire extinguisher with a rating of "2A 10BC" or greater is available near the kitchen area. If the setting has multiple levels at least one functioning fire extinguisher with a rating of "2A 10BC" or greater is available on each level.
4. A working smoke detector is installed:
 - a. In the main living or program area of the setting;
 - b. In each bedroom, if overnight care is provided; and
 - c. On each level of a multiple-level setting.
5. A written emergency evacuation plan is developed to provide guidance on the safe and rapid evacuation of the setting. An emergency evacuation plan shall:
 - a. Identify two routes of evacuation from each bedroom used by individuals residing in or receiving care in the setting. At least one of the exit routes for these bedrooms leads directly to the outside of the setting.
 - b. Identify the location of fire extinguishers and fire evacuation equipment, including rope or chain ladders and emergency lighting, as applicable;
 - c. Designate a safe meeting place outside the setting; and
 - d. Be maintained in the setting to review with individuals residing in or receiving care in the setting.
6. Settings authorized to provide care or services to six or more individuals shall practice and document the completion of an evacuation drill at least once every three months.
7. The exit routes for the setting are clear of obstruction that could prevent safe and rapid evacuation.
8. The locks on exterior doors and windows, including the front door, screen doors, and bars on windows, are equipped with a quick release mechanism. A quick release mechanism is a lock that can be opened from inside the setting without special knowledge (such as a combination) or equipment (such as a key). The Department may grant an exception to this requirement for a double-key deadbolt on a door if:
 - a. There is breakable glass within 40 inches of the interior locking mechanism;
 - b. There is another exit with a quick release mechanism on the same level of the setting; and
 - c. The key for the deadbolt is permanently maintained in a location that is:
 - i. Within 6 feet of the locking mechanism.
 - ii. Accessible to all household members.
 - iii. Reviewed with persons residing in or receiving care in the setting, and
 - iv. Identified on the emergency evacuation plan, specified in subsection (5).
9. The address for the setting is posted and visible from the street, or the local emergency response team, such as the local fire department, is notified of the location of the setting in writing, with a copy of this notification maintained in the setting.

R6-18-709. Pool Requirements

- A. For settings with a pool that is deeper than 4 feet, the care provider shall ensure the following safety equipment is available within the pool enclosure:
 1. A shepherd's crook attached to a pole; and
 2. A ring buoy attached to a rope that measures half the distance across the pool plus 10 feet.
- B. A care provider who has a pool on the premises and provides services to a child age 5 and under or to an individual with developmental disabilities:
 1. Shall ensure the pool is fenced with an enclosure that meets the following requirements:
 - a. The exterior side of the fence is at least 5 feet high;
 - b. If the fence is chain link, the mesh measures less than 1 3/4 inches horizontally;
 - c. If the fence is constructed of vertical bars or wooden slats, the openings between bars or slats measure less than 4

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- inches:
- d. The exterior side of the fence is free of hand holds or foot holds or other means that could be used to climb over the fence;
- e. Gates for the fence are self-closing and self-latching and open out or away from the pool.
- f. The gate latch is at least 54" above the ground and is equipped with a key or combination lock.
- g. The gate to the enclosure is locked, except when there is an adult within the enclosure to supervise the pool and spa area.
- 2. Shall ensure the following, if the home or building used to provide care or supervision constitutes part of the enclosure:
 - a. The enclosure does not interfere with safe egress from the setting.
 - b. A door from the setting does not open within the pool enclosure.
 - c. A window from the setting and located in a room that is designated as a bedroom for an individual receiving care is not positioned within the pool enclosure.
 - d. Other windows from the setting and within the pool enclosure are permanently secured to open no more than 4 inches.