



NOTICES OF FINAL EXEMPT RULEMAKING

This section of the Arizona Administrative Register contains Notices of Final Exempt Rulemaking.

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the

interpretation of the final exempt rule should be addressed to the agency proposing them. Refer to Item #5 to contact the person charged with the rulemaking.

NOTICE OF FINAL EXEMPT RULEMAKING

TITLE 21. CHILD SAFETY

CHAPTER 1. DEPARTMENT OF CHILD SAFETY – ADMINISTRATION

[R15-143]

PREAMBLE

<u>1. Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
Article 1	New Article
R21-1-101	New Section
R21-1-102	New Section
R21-1-103	New Section
R21-1-104	New Section
R21-1-105	New Section
R21-1-106	New Section
R21-1-107	New Section
R21-1-108	New Section
R21-1-109	New Section
R21-1-110	New Section
Article 2	New Article
R21-1-201	New Section
R21-1-202	New Section
R21-1-203	New Section
R21-1-204	New Section
R21-1-205	New Section
R21-1-206	New Section
R21-1-207	New Section
R21-1-208	New Section
R21-1-209	New Section
R21-1-210	New Section
R21-1-211	New Section
R21-1-212	New Section
R21-1-213	New Section
Article 3	New Article
R21-1-301	New Section
R21-1-302	New Section
R21-1-303	New Section
R21-1-304	New Section
R21-1-305	New Section
R21-1-306	New Section
R21-1-307	New Section
R21-1-308	New Section
R21-1-309	New Section
R21-1-310	New Section
R21-1-311	New Section
R21-1-312	New Section
R21-1-313	New Section



R21-1-314	New Section
Article 4	New Article
R21-1-401	New Section
R21-1-402	New Section
R21-1-403	New Section
R21-1-404	New Section
R21-1-405	New Section
R21-1-406	New Section
Article 5	New Article
R21-1-501	New Section
R21-1-502	New Section
R21-1-503	New Section
R21-1-504	New Section
R21-1-505	New Section
R21-1-506	New Section
R21-1-507	New Section
R21-1-508	New Section

**2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific), and the statute or session law authorizing the exemption:**

Authorizing statute: A.R.S. § 8-453(A)(5)

Implementing statutes: A.R.S. §§ 8-807, 8-807.01, 8-126, 8-145, 8-166, 8-506, 8-506.01, 8-509, 8-512, 8-521, 8-521.01, 8-811, 8-814, and 46-141

Statute or session law authorizing the exemption: Laws 2014, Second Special Session, Ch. 1, § 158

**3. The effective date of the rule and the agency's reason it selected the effective date:**

November 30, 2015

**4. A list of all notices published in the Register as specified in R1-1-409(A) that pertain to the record of the exempt rulemaking:**

Notice of Public Information: 21 A.A.R. 1051, July 10, 2015

Notice of Oral Proceeding: 21 A.A.R. 1055, July 10, 2015

Notice of Public Information: 21 A.A.R. 1267, July 31, 2015

Notice of Oral Proceeding: 21 A.A.R. 1269, July 31, 2015

**5. The agency's contact person who can answer questions about the rulemaking:**

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**6. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered to include an explanation about the rulemaking:**

Arizona Revised Statutes (A.R.S.) §§ 8-807 and 8-807.01, authorize the Department of Child Safety (the "Department") to have rules for the release of Department information, including information related to incidents of fatalities and near fatalities of children in the State. A.R.S. § 8-512 authorizes the Department to provide a Comprehensive Medical and Dental Program, (CMDP) for children in an out-of-home placement. The Department is required by statute to have a process for a person licensed by the Department, or receiving a Department subsidy or service to file an appeal with the Department. Events providing the opportunity to file an appeal include an adverse action by the Department such as the denial, suspension, or revocation of a person's or entity's license, or denial or reduction of a person's subsidy or service. The following statutes require an appeal process. A.R.S. §§ 8-126 (adoption agencies); A.R.S. § 8-166 (nonrecurring expenses); A.R.S. § 8-145 (adoption subsidy); A.R.S. § 8-506 (foster home license); A.R.S. § 8-506.01 (child welfare agency license), A.R.S. § 8-521 (independent living services); A.R.S. § 8-521.01 (transitional independent living services); and A.R.S. § 8-814 (permanent guardianship subsidy). A.R.S. § 8-509 requires all foster parents and adult household members in a foster home to have a



Level One fingerprint clearance card. For any entity licensed by or contracted with the Department, A.R.S. § 46-141 requires as a condition of employment that all personnel, who provide services directly to juveniles, whether paid or not, have a valid Level One fingerprint clearance card from the Arizona Department of Public Safety. A.R.S. § 8-811 describes the right of a person to request a hearing to make an appeal to the Department if a report of child abuse or neglect results in a proposed substantiated finding of child abuse or neglect.

Laws 2014, Second Special Session, Ch. 1, § 158 exempts the Department from the rulemaking requirements in A.R.S. Title 14, Chapter 6 until November 28, 2015. A.R.S. § 8-453(A)(5) provides for the Department to “Adopt rules to implement the purposes of the Department and the duties and powers of the director.” The Department received an exception from the Governor’s rulemaking moratorium, established by Executive Order 2015-01, for this rulemaking and is adding Title 21, Chapter 1, Articles 1 through 5. The rules conform to the current rulemaking format and style requirements of the Office of the Secretary of State.

**7. A reference to any study relevant to the rule that the agency reviewed and either relied on 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:**

None

**8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking 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, if applicable:**

The Department was exempted from Title 41, Chapter 6 and therefore no Economic Impact Statement was required.

**10. A description of any changes between the proposed rulemaking, including any supplemental proposed rulemaking, and the final rulemaking package (if applicable):**

Not applicable

**11. An agency’s summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments, if applicable:**

The Department’s exemption from rulemaking required the Department to provide public notice and an opportunity for public comment in writing and at two or more public comment hearings. The exemption did not require the Department to post its responses to the public comments. However, the Department provides the following information on the public comment hearings and public comment.

Public hearings on the CMDP, Appeals and Hearing Procedures, and Fingerprinting rules were held on July 20, 2015 in Tucson and July 21, 2015 in Phoenix. Attendees were given the opportunity to provide oral or written comments. A copy of each rule draft was posted to the Department’s website from June 17, 2015 to July 23, 2015, along with an on-line survey for public comments.

Comments were received in the following areas: For CMDP: 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. For Appeals and Hearing Procedures: Ensure that an appellant who is appealing independent living or transitional independent living services receives a notice with the reasons for any adverse action by the Department, and the opportunity to have an adult other than an attorney represent him or her at an administrative hearing. For Fingerprinting: clarify the term criminal background check versus obtaining a valid Level One Fingerprint Clearance Card; describe any work a new hire may perform pending the issue of a valid Level One Fingerprint Clearance Card. Public hearings on the Release of Department Information and Substantiation of Report Findings were held on August 11, 2015 in Tucson and August 13, 2015 in Phoenix. Attendees were given the opportunity to provide oral or written comments. A copy of each rule draft was posted to the Department’s website from July 10, 2015 to August 14, 2015, along with an on-line survey for public comments. Comments were received for the following areas: For the Release of Department Information: A recommendation that all of a foster child’s records be available to foster parents. For Substantiation of Report Findings: A recommendation that a shorter timeframe for the Department to enter the name of the person in the substantiated report onto the Central Registry after the final administrative decision is made.

The Department reviewed and incorporated comments where applicable in the final rule package.

**12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules. When applicable, matters shall include, but not be limited to:**

**a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**

Not applicable

**b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than the federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**



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, 42 U.S.C. § 620 et seq., and 42 U.S.C. § 670 et seq. apply to this rulemaking. The rules are not more stringent than federal law.

- c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:**  
Not applicable

**13. A list of any incorporated by reference material and its location in the rule:**

None

**14. Whether the rule was previously made, amended, repealed or renumbered as an emergency rule. If so, the agency shall state where the text changed between the emergency and the exempt rulemaking packages:**

The rules were not previously made, amended, repealed, or renumbered as an emergency rule.

**15. The full text of the rules follows:**

**TITLE 21. CHILD SAFETY**

**CHAPTER 1. DEPARTMENT OF CHILD SAFETY - ADMINISTRATION**

**ARTICLE 1. RELEASE OF DEPARTMENT INFORMATION**

Section

<u>R21-1-101.</u>	<u>Definitions</u>
<u>R21-1-102.</u>	<u>Scope and Application</u>
<u>R21-1-103.</u>	<u>Procedures for Requesting DCS Information</u>
<u>R21-1-104.</u>	<u>Procedures for Processing a Request for DCS Information</u>
<u>R21-1-105.</u>	<u>Procedures for Processing a Request for DCS Information from a Person or Entity Providing Services in Official Capacity</u>
<u>R21-1-106.</u>	<u>Release of Summary DCS Information to a Person Who Reported Suspected Child Abuse and Neglect</u>
<u>R21-1-107.</u>	<u>Release of DCS information for a Research or Evaluation Project</u>
<u>R21-1-108.</u>	<u>Release of DCS Information to a Legislator or a Committee of the Legislature, or Another Person that Provides Oversight</u>
<u>R21-1-109.</u>	<u>Release of DCS Information in a Case of Child Abuse, Abandonment, or Neglect that has Resulted in a Fatality or Near Fatality</u>
<u>R21-1-110.</u>	<u>Fees</u>

**ARTICLE 2. COMPREHENSIVE MEDICAL AND DENTAL PROGRAM**

Section

<u>R21-1-201.</u>	<u>Definitions</u>
<u>R21-1-202.</u>	<u>Eligible Member</u>
<u>R21-1-203.</u>	<u>Exceptions, Limitations, and Exclusions</u>
<u>R21-1-204.</u>	<u>Prior Authorization</u>
<u>R21-1-205.</u>	<u>Coordination of Benefits</u>
<u>R21-1-206.</u>	<u>Identification Card</u>
<u>R21-1-207.</u>	<u>Payment and Review of Claims</u>
<u>R21-1-208.</u>	<u>Abuse and Misuse of the Program</u>
<u>R21-1-209.</u>	<u>Administration of the Program</u>
<u>R21-1-210.</u>	<u>Program Practices</u>
<u>R21-1-211.</u>	<u>Consent for Treatment</u>
<u>R21-1-212.</u>	<u>AHCCCS Fee Schedule</u>
<u>R21-1-213.</u>	<u>Claim Disputes and Appeals</u>

**ARTICLE 3. APPEALS AND HEARING PROCEDURES**

Section

<u>R21-1-301.</u>	<u>Definitions</u>
<u>R21-1-302.</u>	<u>Hearing Proceedings</u>
<u>R21-1-303.</u>	<u>Entitlement to a Hearing, Appealable and Not Appealable Actions</u>
<u>R21-1-304.</u>	<u>Computation of Time</u>
<u>R21-1-305.</u>	<u>Request for Hearing; Form; Time Limits; Presumptions</u>
<u>R21-1-306.</u>	<u>Administration: Transmittal of Appeal</u>
<u>R21-1-307.</u>	<u>Stay of Adverse Action Pending Appeal</u>
<u>R21-1-308.</u>	<u>Hearings; Location; Notice; Time</u>
<u>R21-1-309.</u>	<u>Rescheduling the Hearing</u>
<u>R21-1-310.</u>	<u>Subpoenas</u>



- R21-1-311. Parties Rights
- R21-1-312. Withdrawal of an Appeal
- R21-1-313. Effect of the Decision
- R21-1-314. Judicial Review

**ARTICLE 4. FINGERPRINTING**

- Section
- R21-1-401. Definitions
  - R21-1-402. Applicability
  - R21-1-403. Time Period Prior To Results of Personnel Criminal Records Check or Issuance of a Level One Fingerprint Clearance Card
  - R21-1-404. Effect of No Criminal History Disclosed
  - R21-1-405. Effect of Proscribed Criminal History Disclosed or Discovered
  - R21-1-406. Effect of Denied, Expired, Revoked or Suspended Level One Fingerprint Clearance Card

**ARTICLE 5. SUBSTANTIATION OF REPORT FINDINGS**

- Section
- R21-1-501. Definitions
  - R21-1-502. Notice of Right to Appeal, Initial Notification Letter
  - R21-1-503. Time Frame to Request an Administrative Hearing
  - R21-1-504. PSRT Review
  - R21-1-505. Exceptions to Right to a Hearing
  - R21-1-506. Dependency Adjudication
  - R21-1-507. Director Review and Further Appeal After the Administrative Hearing
  - R21-1-508. Entry into the Central Registry

**ARTICLE 1. RELEASE OF DEPARTMENT INFORMATION**

**R21-1-101. Definitions**

The definitions contained in A.R.S. §§ 8-101, 8-201, 8-531, 8-801, 8-807, 8-807.01, and the following definitions apply in this Article:

1. “Abandonment” has the same meaning as “abandoned” in A.R.S. § 8-201.
2. “Abuse” means the same as in A.R.S. § 8-201.
3. “CASA” or “Court Appointed Special Advocate” means a person appointed under A.R.S. § 8-522.
4. “Centralized Intake Hotline” or “the Hotline,” means the entity described in A.R.S. § 8-455.
5. “Child” means a person less than 18 years of age.
6. “Completed request” means a fully completed DCS form or a written communication submitted to DCS requesting DCS Information and providing all the information necessary, as determined by the Department, to process the request. The requester shall have the request notarized or signed by a Department employee to confirm the identity of the requester.
7. “Copying fee” means the final amount a requester is required to pay to the Department before the Department releases the requested DCS Information.
8. “DCS Information” means the same as in A.R.S. § 8-807 and includes information contained in a hard copy or electronic case record, and both oral and written information.
9. “Department” or “DCS” means the Arizona Department of Child Safety.
10. “Estimated copying fee” means the projected total amount of a copying fee. A requester is required to pay the estimated copying fee to the Department before the Department redacts and copies the requested DCS Information.
11. “FCRB” means the Foster Care Review Board established under A.R.S. § 8-515.01.
12. “Incoming communication” means a telephonic, written, or in-person contact to the Department that is received by or ultimately directed to the Centralized Intake Hotline.
13. “Neglect” means the same as in A.R.S. § 8-201.
14. “Person that provides oversight” means those individuals, entities, or bodies authorized by A.R.S. § 8-807 to have access to DCS Information that is reasonably necessary for the person to provide oversight of the Department.
15. “Person who is the subject of DCS Information” means a parent, guardian, custodian, adult household member, child, or other person identified in a DCS report.
16. “Personally identifiable information” means information that specifically identifies a protected individual and includes:
  - a. Name;



- b. Date of Birth;
  - c. Street address;
  - d. Telephone, fax number, or email address;
  - e. Photograph;
  - f. Fingerprints;
  - g. Physical description;
  - h. Place, address, and telephone number of employment;
  - i. Social security number;
  - j. Tribal affiliation and identification number;
  - k. Driver's license number;
  - l. Auto license number;
  - m. Any other identifier that is specific to an individual; and
  - n. Any other information that would permit another person to readily identify the subject of the DCS Information.
17. "Protected individual" means a living person who is the subject of a DCS investigation and others whose personal information is confidential under A.R.S. § 8-807 and includes:
- a. An alleged victim;
  - b. An alleged victim's sibling;
  - c. A parent, guardian, custodian, or adult household member;
  - d. A foster parent;
  - e. A child living with the alleged victim;
  - f. The person who made the report of child abuse or neglect; and
  - g. Any person whose life or safety would be endangered by disclosure of DCS Information.
18. "Redacting" means striking, blacking out, or otherwise editing out personally identifiable information or other information that is not subject to release under A.R.S. § 8-807 contained in DCS hard copy or electronic case records on protected individuals so that no one can access the information.
19. "Report" means an incoming communication to the Centralized Intake Hotline containing an allegation that meets the criteria in A.R.S. § 8-455.
20. "Request" means a written communication seeking DCS Information.
21. "Requester" means an individual, entity, or body that makes a request for DCS Information.
22. "Research requester" means an individual or organization that seeks DCS Information for a research or evaluation project.
23. "Workday" means Monday through Friday excluding Arizona state holidays and mandatory furlough days.

**R21-1-102. Scope and Application**

- A.** This Article governs requests for and release of DCS Information made under A.R.S. § 8-807 and A.R.S. § 8-807.01.
- B.** DCS maintains information in accordance with federal laws under A.R.S. § 8-807.

**R21-1-103. Procedures for Requesting DCS Information**

- A.** A person who wishes to obtain DCS Information shall comply with A.R.S. § 8-807 and the requirements of this Article.
- B.** The requester shall submit to the Department a completed request or use the form provided by the Department. The request shall include the following information:
  - 1. Requester's name, address, and telephone number;
  - 2. Name of the child victim who is the subject of the DCS report, with as much of the following information as the requester can provide on the child victim:
    - a. Other possible spellings, names, or aliases for the child;
    - b. Date of birth;
    - c. The name of the child's caregivers, parents, guardians, and custodians; and
    - d. The date of the DCS report or time-frame for the report.
  - 3. Any other data that the requester believes will assist the Department in identifying the DCS Information requested, such as:
    - a. The name of the child's siblings;
    - b. The child's Social Security number;
    - c. The name of the DCS Child Safety Worker handling the case; and
    - d. The location of the alleged abuse or neglect.



- 4. Any additional information the Department requests to assist in processing the person's request for DCS Information.
- C. Before releasing DCS Information, the Department shall determine whether the requester is entitled to receive the DCS Information under this Article, A.R.S. § 8-807 and A.R.S. § 8-807.01.
- D. This Section does not apply to:
  - 1. A person or entity authorized to receive DCS Information under A.R.S. § 8-807 to:
    - a. Meet its duties to provide for the safety, permanency, and well-being of a child;
    - b. Provide services to the child, parent, guardian, custodian, or family members to strengthen the family;
    - c. Enforce or prosecute violations of child abuse or neglect laws;
    - d. Help investigate and prosecute any violation involving domestic violence as defined in A.R.S. § 13-3601 or violent sexual assault as defined in A.R.S. § 13-1423; or
    - e. Provide DCS Information to a defendant after a criminal charge has been filed as required by an order of the criminal court.
  - 2. This Section also does not apply to:
    - a. Juvenile, domestic relations, family or conciliation court;
    - b. The parties or their attorneys in a dependency, guardianship, or termination of parental rights proceeding;
    - c. The FCRB;
    - d. A CASA; or
    - e. A person that provides oversight to the Department.

**R21-1-104. Procedures for Processing a Request for DCS Information**

- A. Upon receipt of a request for DCS Information, the Department shall determine whether the request is complete. If the request is incomplete, the Department shall either:
  - 1. Return the request to the requester with a statement explaining the additional information the Department needs to process the request; or
  - 2. Contact the requester to obtain the missing information.
- B. Upon receipt of a completed request, the Department shall stamp the receipt date on the request. The receipt date is the day the Department receives the completed request.
- C. Within 30 workdays of the receipt date, the Department shall provide the requester with one of the following written responses:
  - 1. The requested DCS Information;
  - 2. A statement that the requested DCS Information does not exist;
  - 3. A statement that the Department cannot provide the requested DCS Information within 30 workdays, the reason for the delay, and the anticipated time-frame for response; or
  - 4. A statement that the Department cannot release the requested DCS Information, with the statutory citation and the reason for the denial.

**R21-1-105. Procedures for Processing a Request for DCS Information from a Person or Entity Providing Services in Official Capacity**

- A. The Department shall release DCS Information without charging the fee required by R21-1-110 when a person or entity entitled to receive DCS Information requires information to:
  - 1. Meet its duties to provide for the safety, permanency, and well-being of a child;
  - 2. Provide services to the child, parent, guardian, custodian, or family members to strengthen the family;
  - 3. Enforce or prosecute a violation of child abuse or neglect laws;
  - 4. To help investigate and prosecute any violation involving domestic violence as defined in A.R.S. § 13-3601, or violent sexual assaults as defined in A.R.S. § 13-1423;
  - 5. Provide DCS Information to a defendant as required by an order of the criminal court; or
  - 6. Provide DCS Information to:
    - a. A juvenile, domestic relations, family or conciliation court;
    - b. The parties or their attorneys in a dependency, guardianship, or termination of parental rights proceeding;
    - c. The FCRB;
    - d. A CASA; or
    - e. A person that provides oversight of DCS.
- B. Before releasing DCS Information under this Section, the Department shall determine that the person requesting DCS Information is a person entitled to receive DCS Information under this Section and A.R.S. § 8-807.
- C. Within 30 workdays of the receipt date, the Department shall provide the requester with one of the following written responses:
  - 1. The requested DCS Information;
  - 2. A statement that the requested DCS Information does not exist;
  - 3. A statement that the Department cannot provide the requested DCS Information within 30 workdays, the reason for the delay, and the anticipated time-frame for response; or
  - 4. A statement that the Department cannot release the requested DCS Information, with the statutory citation and the reason for the denial.

**R21-1-106. Release of Summary DCS Information to a Person Who Reported Suspected Child Abuse and Neglect**

- A.** A person who reports suspected child abuse or neglect to DCS may contact DCS to obtain a summary of the outcome of the investigation, as authorized by A.R.S. § 8-807.
- B.** After receiving a completed request and before releasing DCS Information, the Department shall determine that the person requesting DCS Information was the person who made the report as follows:
1. Obtain the name and telephone number of the requester, and
  2. Compare the requester's name with the name of the person listed as the reporting source on the DCS report.
- C.** After determining the identity of the requester, the Department shall call and advise the requester whether the Department has statutory authority to provide the requested DCS Information.
- D.** If the requester is entitled to receive the requested DCS Information under A.R.S. § 8-807, DCS shall verbally provide the person a summary of the outcome with the following DCS Information:
1. Disposition of the report;
  2. Investigation findings, if available; and
  3. A general description of the services offered or provided to the child and family.

**R21-1-107. Release of DCS Information for a Research or Evaluation Project**

- A.** A person seeking DCS Information for a research or evaluation project shall send a written request to the Department. A request shall include the following information:
1. If the person works for a research organization:
    - a. The name of the organization, and
    - b. The organization's mission;
  2. A description of the research or evaluation project and the data requested, which explains how the results of the project will improve the Department;
  3. A description of the plan for maintaining the confidentiality of personally identifiable information, if requested, and disseminating the results of the project; and
  4. The funding source for the research or evaluation project.
- B.** Within 30 workdays of receipt of a completed request from a research requester, the Department shall:
1. Advise the requester whether the Department will provide the requested DCS Information,
  2. Inform the requester of the estimated copying fee required under R21-1-110, and
  3. Inform the requester of the expected time-frame for providing the requested DCS Information.
- C.** The Department shall provide the requester with the requested DCS Information, upon completion and after receipt of the copying fee.

**R21-1-108. Release of DCS Information to a Legislator or a Committee of the Legislature, or Another Person that Provides Oversight**

- A.** A person that provides oversight of DCS and seeks DCS Information shall send a request to the Department and include the following information:
1. The name of the person seeking the information;
  2. The purpose of the request and its relationship to the person's official duties; and
  3. The person's signature, or the signature of an authorized agent for an entity or other body, confirming that the person or authorized agent understands the DCS Information shall not be further disclosed unless authorized by A.R.S. § 8-807.
- B.** A legislator or committee of the legislature seeking DCS Information to perform official duties shall send a request to the presiding officer of the body of which the state legislator is a member and include the name of the person whose case record is to be reviewed and any other information that will assist the Department in locating the record. The legislator shall also sign the request, confirming that the legislator understands that the DCS Information shall not be further disclosed unless authorized by A.R.S. § 8-807. The presiding officer shall forward the request to the Department within five workdays of receiving the request.
- C.** The copying fee required under R21-1-110 does not apply to this Section.
- D.** Within 10 workdays of receiving the request, the Department shall provide the requester with one of the following written responses:
1. The requested DCS Information;
  2. A statement that the requested DCS Information does not exist;
  3. A statement that the Department cannot provide the requested DCS Information within 10 workdays, the reason for the delay and the anticipated time-frame for response; or
  4. A statement that the Department cannot provide the requested DCS Information, with the statutory citation and the reason for denial.

**R21-1-109. Release of DCS Information in a Case of Child Abuse, Abandonment, or Neglect that has Resulted in a Fatality or Near Fatality**

- A.** A person who requests DCS Information under A.R.S. § 8-807.01 concerning a case of child abuse, abandonment, or neglect that resulted in a fatality or near fatality, shall send a written request to the Department.
- B.** Upon receipt of the request, the Department shall stamp the receipt date on the request and begin gathering the requested DCS Information.
- C.** Prior to release of DCS Information in a case of child abuse or neglect resulting in a fatality or near fatality, the Depart-



ment shall consult with the County Attorney who shall promptly inform the Department if it believes the release would cause a specific material harm under A.R.S. § 8-807.01. The Department shall not release any information that the County Attorney indicates would cause specific material harm.

- D. The Department shall notify the requester in writing of the estimated copying fee. If the requester does not want to proceed, the requester shall notify the Department within 72 hours to cancel the request. If this notification is oral, the requester shall confirm the cancellation in writing.
- E. The requester shall pay the estimated copying fee before the Department copies any DCS Information.
- F. After receipt of the final copying fee, the Department shall provide DCS Information consistent with A.R.S. § 8-807 and A.R.S. § 8-807.01.

**R21-1-110. Fees**

- A. If the Department determines a request for DCS Information will result in a copying fee, the Department shall notify the requester of the estimated fee before copying any DCS Information.
- B. Unless otherwise exempted by this Chapter, the Department may charge a copying fee at the current rate set by the Department, as provided on the DCS website at <https://dcs.az.gov>.
- C. The copying fee applies to both paper and electronic copies. If the DCS Information is requested in an electronic format, but does not already exist in an electronic format, DCS shall apply additional fees that reflect the actual cost of conversion to copy the DCS Information to an electronic format.
- D. The Department shall notify the requester in writing of the final copying fee.
- E. The Department shall reimburse the requester if final copying costs are less than the estimated copying fee.

**ARTICLE 2. COMPREHENSIVE MEDICAL AND DENTAL PROGRAM**

**R21-1-201. Definitions**

The definitions in A.R.S. § 8-501 and the following definitions apply to this Article.

1. “AHCCCS” means the Arizona Health Care Cost Containment System, which is the State’s program for medical assistance available under Title XIX of the Social Security Act and state public insurance statutes, A.R.S. Title 36, Chapter 29.
2. “AHCCCS fee schedule” means the allowable amounts established by AHCCCS for medical, dental, and behavioral health services under A.R.S. § 36-2904.
3. “Behavioral health recipient” means a Title XIX or Title XXI CMDP Member who is eligible for, and is receiving the behavioral health services through Medicaid behavioral health contractors.
4. “Child Safety Worker” means the same as A.R.S. § 8-801.
5. “CMDP” or “Comprehensive Medical and Dental Program” means the program authorized by A.R.S. § 8-512 and these rules.
6. “CMDP Member” means the same as in A.R.S. § 8-512, a child who is:
  1. In a voluntary placement pursuant to section 8-806.
  2. In the custody of the department in an out-of-home placement.
  3. In the custody of a probation department and placed in foster care. The department shall not provide this care if the cost exceeds funds currently appropriated and available for that purpose.
7. “Covered services” means those benefits as described in A.R.S. Title 36, Chapter 29, Article 1 and contained in the approved Medicaid State Plan.
8. “Department” or “DCS” means the Department of Child Safety.
9. “Director” means the Director of the Department of Child Safety.
10. “Foster parent” means the same as A.R.S. § 8-501.
11. “Medically necessary” means a covered service provided by a physician, or other licensed practitioner in the healing arts within the scope of practice under state law to prevent disease, disability, or other adverse health conditions or their progression, or to prolong life.
12. “Non-Title XIX Behavioral Health recipient,” “non-Title XIX” or “State Only Member” means a CMDP Member who is not eligible for Title XIX or Title XXI, and is receiving all covered services including behavioral health services through CMDP.
13. “Out-of-home care provider” means the person or entity with whom a child resides in out-of-home placement.
14. “Out-of-home placement” means the same as A.R.S. § 8-501.

**R21-1-202. Eligible Member**

- A. The Department shall provide CMDP to a CMDP Member under A.R.S. § 8-512 and this Article.
- B. The Department shall not provide CMDP care and services to:
  1. An individual who no longer meets the eligibility in A.R.S. § 8-512 and this Article;
  2. A child under the Bureau of Indian Affairs foster care program; or
  3. A child placed in Arizona by another state whether voluntarily or under jurisdiction of the court of another state.
- C. AHCCCS determines the eligibility of a CMDP Member for Title XIX and Title XXI services, and CMDP shall notify AHCCCS if a Title XIX and Title XXI eligible CMDP Member no longer meets the criteria for coverage in A.R.S. § 8-512 and this Article.

**R21-1-203. Exceptions, Limitations, and Exclusions**

The Department shall not pay for a CMDP Member:

1. The cost of any medical or dental service that:
  - a. Is not medically necessary for prevention, diagnosis, or treatment of a condition, illness, or injury; or
  - b. Any health or medical service that is not eligible for reimbursement by AHCCCS in 9 A.A.C. 22, Article 2, and includes cosmetic procedures, experimental treatment, and personal care items.
2. The portion of the cost of any covered service that exceeds the charges set by the current and approved AHCCCS fee schedule. A medical, dental, or other health provider shall not submit a claim for charges that exceed the AHCCCS fee schedule to any party, including:
  - a. The Department, its representatives, or any fiscal intermediary the Department may contract with to administer this program;
  - b. The CMDP Member;
  - c. The CMDP Member's:
    - i. Guardian,
    - ii. Custodian,
    - iii. Estate,
    - iv. Foster parent, or
    - v. Birth parent.
3. The cost of care and services payable through any federal, state, county, or municipal program to which a CMDP Member may be entitled, except for the cost of care and services in excess of any such program.
4. The cost of care and services payable through an insurance carrier that provides coverage for the CMDP Member under A.R.S. § 8-512, except for the cost of care and services in excess of any such insurance benefits.
5. Any admission, service, item, or otherwise uncovered service identified in A.R.S. Title 36, Chapter 29, Article 1, or the approved Medicaid State Plan.
6. The cost of care and services provided to a behavioral health recipient received through Medicaid behavioral health contractors.

**R21-1-204. Prior Authorization**

- A.** Medical, dental, and other health providers may be required to obtain authorization from CMDP before certain covered services are rendered in order for those services to be paid for under this Article and A.R.S. § 8-512.
- B.** The Department shall not pay for any covered service that requires prior authorization and was:
  1. Not submitted for prior authorization; or
  2. Submitted but the Department did not grant prior authorization.
- C.** Medical and dental providers shall be required by CMDP to obtain prior authorization for certain services according to the provisions of A.R.S. Title 36, Chapter 29, Article 1, and 9 A.A.C. 22, Article 1.
- D.** In instances where a prior authorization is required for a covered service but not obtained by the medical, dental, or other health provider, the medical, dental, or other health provider shall not submit a bill for a covered service to any party, including:
  1. The Department;
  2. The Department's representatives;
  3. Any fiscal intermediaries the Department may contract with to administer this program;
  4. The CMDP Member;
  5. The CMDP Member's:
    - a. Guardian,
    - b. Custodian,
    - c. Estate,
    - d. Foster Parent, or
    - e. Birth parent.

**R21-1-205. Coordination of Benefits**

- A.** The Department shall determine the possible existence of any primary insurance coverage for a CMDP Member.
- B.** The Department shall request that the court include a statement in the court order requiring a parent, guardian, or custodian of a CMDP Member to cooperate with the Department in coordinating benefits with any existing health insurance carrier, and to maintain any health insurance coverage presently existing which covers a CMDP Member.
- C.** The Department shall advise the court when a parent or guardian of a CMDP Member refuses to cooperate with CMDP in providing or signing any document required to coordinate insurance benefits, or if the parent, guardian, or custodian fails to maintain any existing insurance coverage for the CMDP Member.
- D.** In a voluntary placement, the parent or guardian shall cooperate with CMDP by providing and signing appropriate documents required to coordinate health insurance benefits.

**R21-1-206. Identification Card**

- A.** The Department shall issue a CMDP identification card for each CMDP Member.
- B.** The Department shall, upon placement, inform the out-of-home care provider in writing that:
  1. The identification card is not transferable;



- 2. The out-of-home care provider shall only use the card for medical, dental, or other covered services for the CMDP Member whose name appears on the card; and
- 3. The out-of-home care provider shall only use the card while the CMDP Member remains eligible for CMDP coverage.
- C. The Department shall give the out-of-home care provider oral and written instructions regarding the use of the identification card when procuring medical care, dental care, or other covered services for the CMDP Member.
- D. The Department shall provide the name and contact information of the CMDP Member’s behavioral health services provider.
- E. An out-of-home care provider shall return the CMDP Member’s identification card when the CMDP Member is:
  - 1. No longer in out-of-home placement;
  - 2. Placed with another out-of-home care provider; or
  - 3. Runs away from the out-of-home placement.
- F. The out-of-home care provider who has possession of the card shall:
  - 1. Immediately return the identification card to the Department under subsections (E)(1) and (2); or
  - 2. Have seven days from the date the CMDP Member runs away from the out-of-home care provider to return the card to the Department under subsection (E)(3).

**R21-1-207. Payment and Review of Claims**

- A. A medical, dental, or health provider shall submit a claim for payment in the manner prescribed by the Department.
- B. CMDP shall not pay a claim for a covered service if the CMDP Member does not keep an appointment, or if a covered service was not provided.
- C. A medical, dental, or other healthcare provider shall provide a covered service to the CMDP Member before submitting a claim for the covered service to CMDP.

**R21-1-208. Abuse and Misuse of the Program**

- A. The Department shall establish a procedure to investigate any alleged abuse of CMDP. If the Department substantiates abuse, the Department shall take administrative action and may take legal action.
- B. The Department shall monitor the activity of CMDP to ensure compliance with the program requirements.

**R21-1-209. Administration of the Program**

- A. The Department may contract with any insurer, insurance plan, hospital service plan, or any health service plan authorized to do business in this State, with any fiscal intermediary, or with any combination of such plans or methods as permitted in A.R.S. Title 36, Chapter 29, Article 1.
- B. Any contract with any of the entities listed in subsection (A), shall:
  - 1. Be specific as to the responsibilities of each party to the contract;
  - 2. Provide for reasonable payment to the contractor for its administrative services as required by the contract; and
  - 3. Be consistent with the rules in this Article and authorizing legislation. The parties may make changes to the contract by mutual consent signed by an authorized representative of the Department and the contractor to be consistent with current rules and legislation.

**R21-1-210. Program Practices**

- A. All Federal and State laws, regulations, and rules regarding the disclosure and use of confidential health and personal information concerning a CMDP Member shall apply to all covered services provided under this Article.
- B. All Federal and State non-discrimination laws, regulations, and rules shall apply to all covered services provided under this Article.
- C. The Department shall take into account the CMDP Member’s and out-of-home care provider’s literacy and culture and make interpreters and translation services available to a CMDP Member at no cost.

**R21-1-211. Consent for Treatment**

- A. For a CMDP Member in voluntary placement only, the Department shall obtain consent of the parent or guardian for medical treatment involving surgery, general anesthesia, or blood transfusion of the CMDP Member, except for an emergency situation described in subsection (B).
- B. In case of an emergency, in which the CMDP Member in voluntary placement is in need of immediate hospitalization, medical attention, or surgery, and when the parents of a CMDP Member in voluntary placement cannot readily be located, the out-of-home care provider or the Child Safety Worker may give consent.
- C. For a CMDP Member under R21-1-201(6)(2) who is in the custody of the Department in an out-of-home placement, the Department shall, if possible, obtain the consent of the parent or guardian of the CMDP Member for surgery, general anesthesia, or blood transfusion.

**R21-1-212. AHCCCS Fee Schedule**

- A. CMDP shall pay a medical, dental, and health provider in accordance with the established AHCCCS fee schedule unless otherwise permitted by A.R.S. § 8-512, or in the contract between the Department and AHCCCS.
- B. A current AHCCCS fee schedule is available for a medical, dental, other health provider, and CMDP Member on the AHCCCS website, <http://www.azahcccs.gov/>. The Department shall also make the fee schedule available upon request.

**R21-1-213. Claim Disputes and Appeals**

- A. Claim disputes are governed by the Medicaid rules in 9 A.A.C. Chapter 34.
- B. Appeals by Title XIX and Title XXI eligible CMDP Members are governed by the Medicaid rules for State Hearings in



9 A.A.C. Chapter 34.

C. Appeals by State-Only Members are governed by Article 3 of this Chapter.

### **ARTICLE 3. APPEALS AND HEARING PROCEDURES**

#### **R21-1-301. Definitions**

The following definitions apply in this Article.

1. “Administration” means the Department’s organizational unit responsible for licensing or providing benefits or services that are the subject of an adverse action. The administrations covered by this Article are: OLR, CMDP, ILP, TILP, adoption subsidy and guardianship subsidy.
2. “Administrative appeal” means a written request to the Department to contest an adverse action at an administrative hearing.
3. “Administrative Law Judge” or “ALJ” means the same as A.R.S. § 41-1092(1).
4. “Adoption agency” means the same as “agency” in A.R.S. § 8-101(2).
5. “Adoption subsidy” means the same as A.R.S. § 8-141(A)(1) and includes the non-recurring adoption expense program under A.R.S. § 8-161 et seq.
6. “Adverse action” means the denial, suspension, or revocation of a foster home license, Child Welfare Agency license, and adoption agency license, or a denial or reduction of guardianship subsidy, adoption subsidy, or CMDP, ILP, or TILP services.
7. “Appealable agency action” means the same as A.R.S. § 41-1092(3).
8. “Appellant” means the party who requests a hearing with the Department to challenge an adverse action under R21-1-303.
9. “Applicant” means a person who has applied for a license issued by the Department or for benefits or services provided by the Department. Benefits and services under this Article include CMDP, ILP, TILP, guardianship subsidy, and adoption subsidy.
10. “Child Welfare Agency” means a person licensed by the Department to engage in the activities defined in A.R.S. § 8-501(A)(1).
11. “CMDP” means the Comprehensive Medical and Dental Program described in A.R.S. § 8-512.
12. “Client” means a person who is licensed or receiving benefits or services from one or more of the Administrations covered by this Article.
13. “Corrective action plan” means a written proposal specified by OLR for a foster parent, or a Child Welfare Agency to remedy the violation of a licensing requirement within a specified time-frame.
14. “Department” or “DCS” means the Arizona Department of Child Safety.
15. “Foster Home” means the same as A.R.S. § 8-501(A)(5) and includes a “Group Foster Home” defined in A.R.S. § 8-501(A)(7).
16. “Foster parent” means the same as A.R.S. § 8-501, and includes anyone licensed for any type of foster home including a group home.
17. “Guardianship subsidy” means the program described in A.R.S. § 8-814.
18. “Independent Living Program” or “ILP” means an array of assistance and support services that DCS provides, contracts, refers, or otherwise arranges to help a person eligible under A.R.S. § 8-521, to transition to adulthood by building the skills and resources necessary to ensure personal safety, well-being, and permanency into adulthood.
19. “Licensee” means a person currently licensed as a foster parent, Child Welfare Agency, or adoption agency.
20. “Noncompliance Status” means the Department has received and substantiated a complaint or a Department representative has observed a violation of an adoption agency’s license that does not endanger the health, safety, or well-being of a client.
21. “Office of Administrative Hearings” or “OAH” means the State’s independent, quasi-judicial, administrative hearing body defined in A.R.S. § 41-1092.01.
22. “Office of Licensing and Regulation” or “OLR” means the administration in the Department responsible for licensing a foster home, Child Welfare Agency and adoption agency.
23. “Person” means an individual, partnership, joint venture, company, corporation, firm, association, society, or institution.
24. “Transitional Independent Living Program” or “TILP” means a program of services that provides assistance and support in counseling, education, vocation and employment, and the attainment or maintenance of housing to a person who qualifies under A.R.S. § 8-521.01.



**R21-1-302. Hearing Proceedings**

Unless otherwise expressly addressed, all pre-hearing and hearing proceedings in A.R.S. §§ 41-1092.01 through A.R.S. 41-1092.09 and 2 A.A.C. 19 shall apply.

**R21-1-303. Entitlement to a Hearing; Appealable and Not Appealable Actions**

A. An applicant, licensee, or client, who disputes an adverse action may appeal and request an administrative hearing from the Department to challenge the adverse action as provided in this Article.

B. The following adverse actions are appealable:

- 1. An adverse licensing action on:
  - a. A foster home license (A.R.S. § 8-506);
  - b. A Child Welfare Agency license (A.R.S. § 8-506.01); and
  - c. An adoption agency license (A.R.S. § 8-126).
- 2. Any decision denying, reducing, or terminating:
  - a. An adoption subsidy (A.R.S. § 8-145);
  - b. Nonrecurring expenses (A.R.S. § 8-166);
  - c. A permanent guardianship subsidy (A.R.S. § 8-814);
  - d. Independent Living Program services (A.R.S. § 8-521);
  - e. Transitional Independent Living Program services (A.R.S. § 8-521.01); and
  - f. CMDP services or benefits for non-Title XIX and Title XXI eligible individuals. Title XIX and Title XXI eligible individuals must follow A.R.S. § 36-2903.01 and 9 A.A.C. 34, and may request an Administrative Hearing through the Arizona Health Care Cost Containment System.

C. The following actions are not appealable:

- 1. An adverse action resulting from a uniform change in federal or state law, unless the Department has misapplied the law to the person seeking the hearing;
- 2. Failure to obtain a Level One fingerprint clearance card;
- 3. Imposition of noncompliance status for an adoption agency;
- 4. Imposition of a corrective action plan for a foster home or a Child Welfare Agency license;
- 5. Removal of a child from a placement;
- 6. Failure to enter into a contract with a particular licensee or to place a child with a particular licensee; and
- 7. Imposition of a provisional license for a foster home under A.R.S. § 8-509(D).

D. A finding of child abuse or neglect in a DCS investigation is not appealable under this Article. A person may appeal a proposed finding of child abuse or neglect made in a DCS investigation of a person or a licensee as prescribed in A.R.S. § 8-811 and A.A.C. Title 21, Chapter 1, Article 5.

**R21-1-304. Computation of Time**

A. In computing any time period:

- 1. The term “day” means a calendar day;
- 2. The term “work day” means Monday through Friday, excluding Arizona state holidays;
- 3. The date of the act, event, notice, or default from which a designated time period begins to run is not counted as part of the time period; and
- 4. The last day of the designated time period is counted, unless it is a Saturday, Sunday, or Arizona state holiday.

B. The mailing date is the date of the document, unless the facts show otherwise.

C. A document mailed by the Department is deemed received by the addressee, five days after the mailing date to the addressee’s last known address, unless the facts show otherwise.

**R21-1-305. Request for Hearing; Form; Time Limits; Presumptions**

A. An appellant who wishes to appeal an adverse action shall file a written request within the following timeframes for a hearing with the Administration:

- 1. For a Child Welfare Agency, 20 days after receipt of the adverse action notice under A.R.S. § 8-506.01;
- 2. For a foster home license revocation, 25 days after the mailing date of the adverse action notice under A.R.S. § 8-506;
- 3. For all other appeals covered by this Article, 20 days after receipt of the adverse action notice.

B. The Administration shall provide a form for requesting an administrative hearing and, upon request, shall assist an appellant in completing the form.

C. An appellant shall include the following information in the request for an administrative hearing:

- 1. Name, address, and telephone number, and if applicable, e-mail address of the person subject to the adverse action;
- 2. Identification of the Administration initiating the adverse action;
- 3. A description of the adverse action that is the subject of the appeal;
- 4. The date of the notice or letter of adverse action; and
- 5. A statement explaining why the adverse action is unauthorized, unlawful, or an abuse of discretion.

D. The Department shall not deny an appeal solely because the request does not include all the information listed in subsection (C), so long as the request contains sufficient information for the Department to determine the identity of the appellant.

E. The Department shall forward the request for a hearing to OAH along with the information specified in A.A.C. R2-19-



103.

- F.** A request for hearing is deemed filed with the Department:
1. On the mailing date, as shown by the postmark, if sent first-class mail, postage prepaid, through the United States Postal Service to the Department; or
  2. On the date actually received by the Department, if not mailed as provided in subsection (F)(1).
- G.** An appellant whose appeal is denied as untimely may request a review by the Department Director or designee. The request for review shall contain the following information:
1. Whether the appellant received the adverse action notice, and if so, when the appellant received the notice;
  2. If the appellant did not receive the adverse action notice:
    - a. Whether the appellant moved recently, and if so, whether the appellant notified the Department of the new address;
    - b. The type of mail receptacle the appellant uses;
    - c. The person that collects or receives the appellant's mail besides the appellant such as the appellant's:
      - i. Spouse,
      - ii. Child, or
      - iii. Roommate.
    - d. Whether the appellant has or is currently experiencing problems in receiving mail such as:
      - i. Not receiving the appellant's own mail; or
      - ii. Receiving others' mail;
  3. If the appellant did not receive the adverse action notice, how the appellant found out about the adverse action; and
  4. The date the appellant made the appeal to the Department and the method sent such as:
    - a. Hand delivery,
    - b. U.S. Mail,
    - c. Fax, or
    - d. E-mail.
- H.** The Department Director or designee may determine that a document was timely filed if the appellant demonstrates that the delay in submission was due to any of the following reasons:
1. Department error or misinformation;
  2. Delay or other action by the United States Postal Service; or
  3. Delay caused by the appellant changing mailing addresses at a time when the appellant had no duty to notify the Administration of the change.
- I.** When the Administration receives a request for a hearing that was not filed on time, the Department Director or designee shall determine if the delay meets the criteria under subsection (H), and if so, shall schedule a hearing with OAH.

**R21-1-306. Administration: Transmittal of Appeal**

An Administration that receives a request for an appeal shall send the OAH a copy of the request and a copy of the adverse action notice within two work days of receipt of the request. The Administration shall include all information as specified in A.A.C. R2-19-103.

**R21-1-307. Stay of Adverse Action Pending Appeal**

- A.** If an applicant, licensee, or client does not appeal, the Department shall carry out the adverse action after the time for filing an appeal has passed, or sooner if the appellant waives the delay of action in writing.
- B.** If an applicant, licensee, or client does not appeal, the Department shall not carry out the adverse action if the appellant has an additional appealable adverse action notice that may result in the same adverse action proposed in the current notice, and the time for filing an appeal to the additional adverse action notice has not passed.
- C.** If an appellant timely appeals an appealable adverse action as provided in R21-1-305, the Department shall not carry out the adverse action until an administrative hearing has been held and the Director certifies a final administrative decision.
- D.** If an appellant timely appeals an adverse action under R21-1-305, the Department may immediately carry out the adverse action under the following circumstances:
1. The appellant expressly waives the delay of action;
  2. The appeal challenges an adverse action that is not appealable under R21-1-303(C);
  3. The appellant withdraws the request for hearing;
  4. The appellant fails to appear for the hearing; or
  5. The Department summarily suspends a license and makes all of the required findings under A.R.S. § 41-1064.

**R21-1-308. Hearings: Location; Notice; Time**

- A.** The hearing shall be held by OAH.
- B.** OAH may schedule a telephonic hearing or permit a witness to appear telephonically as granted in A.A.C. R2-19-114.
- C.** After receiving a request for an appeal, the Department shall hold the hearing:
1. For a foster parent, 10 days after the Department receives the request for an appeal under A.R.S. § 8-506;
  2. For a Child Welfare Agency, 10 days after the Department receives the request for an appeal under A.R.S. § 506.01; and
  3. The time listed in A.R.S. § 41-1092.05(A)(2) for all other appeals.
- D.** The Department shall mail a notice of hearing to all interested parties at least 20 days before the scheduled hearing date.



except where the hearing is held within the 10-day period specified in subsection (C)(1) and (C)(2). For hearings held within the 10-day period, the Department shall notify the parties by telephone and send a written notice at the earliest date practicable.

E. The notice of the hearing shall be in writing and shall include the information required in A.R.S. § 41-1092.05(D) and A.A.C. R2-19-104.

**R21-1-309. Rescheduling a Hearing**

A. An appellant may request to postpone or reschedule a hearing under R2-19-110.

B. Except in emergency circumstances, the appellant shall file a request for postponement at least five work days before the scheduled hearing date. OAH may deny an untimely request by considering the factors in A.A.C. R2-19-110.

C. When OAH reschedules a hearing under this Section or under A.A.C. R2-19-110, OAH notifies all interested parties in writing of the rescheduled hearing. The notice requirements in R21-1-305(A) do not apply to postponed or rescheduled hearings.

**R21-1-310. Subpoenas**

A. A party who wishes to have a witness testify at a hearing, or to offer a particular document or item in evidence, shall first attempt to obtain the witness or evidence by voluntary means.

B. A party shall request a subpoena under A.A.C. R2-19-106 and A.A.C. R2-19-113.

**R21-1-311. Parties' Rights**

A party to a hearing has the following rights:

1. The right to request a postponement of the hearing, as provided in A.A.C. R2-19-106(A)(2) and A.A.C. R2-19-110.
2. The right to a copy, before or during the hearing, of documents in the Department's file regarding the appellant, and documents the Department may use at the hearing, except documents:
  - a. Shielded by the attorney-client privilege;
  - b. Shielded by work-product privilege; or
  - c. Otherwise prohibited by federal or state confidentiality laws.
3. The right to file a motion with OAH to disqualify an ALJ from conducting a hearing as provided in A.R.S. § 41-1092.07(A);
4. The right to request subpoenas for witnesses and evidence as provided in A.A.C. R2-19-113;
5. The right to represent themselves or be represented by a licensed attorney, subject to any limitations prescribed in the Rules of the Supreme Court of Arizona, Rule 31;
6. The right to present evidence and to cross-examine witnesses; and
7. The right to further appeal, if dissatisfied with a decision.

**R21-1-312. Withdrawal of an Appeal**

A. An appellant may withdraw an appeal at any time prior to the scheduled hearing by signing a written statement expressing the intent to withdraw. The Department shall make a form available for an appellant to withdraw an appeal. An appellant may also orally withdraw an appeal on the open record under A.A.C. R2-19-111.

B. The Department shall sign the form and file the form at OAH.

C. OAH shall vacate the hearing and return the matter to the Department under A.A.C. R2-19-111.

**R21-1-313. Effect of the Decision**

A. If the Department Director reviews the ALJ's recommended decision the Director may agree or disagree with the recommended decision as permitted in A.R.S. § 41-1092.08(F).

B. The Department Director's final administrative decision becomes effective on the day OAH certifies the Department Director's final administrative decision.

C. If the Department Director chooses not to review the recommended decision, then the ALJ's recommended decision becomes the final administrative decision within the timeframe under A.R.S. § 41-1092.08.

D. If the final administrative decision affirms the adverse action, the adverse action remains in effect until the appellant appeals and obtains a higher judicial decision reversing or vacating the final administrative decision.

E. If a final administrative decision reverses the Department's adverse action, the Department shall not take the adverse action.

**R21-1-314. Judicial Review**

Any party adversely affected by a final administrative decision may seek judicial review as prescribed in A.R.S. § 1092.08 and A.A.C. R2-19-122.

**ARTICLE 4. FINGERPRINTING**

**R21-1-401. Definitions**

In this Article, unless the context otherwise requires:

1. "Applicant" means personnel who apply for a Level One fingerprint clearance card or a person who applies for a license or certificate issued by the Department and who A.R.S. § 46-141(I) requires to submit a full set of fingerprints for the purpose of obtaining a state and federal criminal records check.
2. "Criminal History" means the same as A.R.S. § 41-1750(Y)(5).
3. "Department" or "DCS" means the Arizona Department of Child Safety.



4. “Direct visual supervision” means within sight and hearing of a provider or personnel who have a Level One fingerprint clearance card.
5. “Juvenile” means an individual who is less than 18 years of age.
6. “Level One fingerprint clearance card” means the same as A.R.S. § 41-1758.07(A).
7. “License” means the whole or part of a Department permit, registration, or similar form of permission or authorization required by law, but does not include a foster home license.
8. “Person” means a corporation, company, partnership, firm, association or society, as well as a natural person.
9. “Provider” means a federally recognized Indian tribe, county, political subdivision, military base, or person with whom the Department contracts or licenses to provide services to juveniles.
10. “Personnel” means paid or unpaid persons who have or may have direct contact with juveniles or provide services directly to juveniles for a provider, including the provider, consultants, subcontractors, volunteers, students, and persons otherwise affiliated with the provider.
11. “Services directly to juveniles” means in-person interaction between a provider or personnel and a juvenile.
12. “Supervised” means that personnel are within direct visual supervision at all times when providing services of any nature directly to juveniles, including psychological, medical, or any ancillary services.

**R21-1-402. Applicability**

This Article covers any applicant, provider, and personnel. This Article does not apply to a foster home license or adoptive home certification.

**R21-1-403. Time Period Prior To Results of Personnel Criminal Records Check or Issuance of a Level One Fingerprint Clearance Card**

- A. A provider shall not allow an applicant who applies for a Level One fingerprint clearance card under A.R.S. § 46-141 to provide services directly to juveniles or have unsupervised contact with juveniles until the applicant obtains a valid Level One fingerprint clearance card.
- B. A provider shall not allow an applicant who is required to submit fingerprints to the Department under A.R.S. § 46-141(I) to provide services directly to or have unsupervised contact with juveniles unless the applicant clears the Criminal records check or obtains a valid Level One fingerprint clearance card, as applicable.

**R21-1-404. Effect of No Criminal History Disclosed**

A provider may allow an applicant or personnel who certifies under A.R.S. § 46-141(E), (F), and (G) that the applicant or personnel has not been convicted of or is awaiting trial for an offense listed in A.R.S. § 41-1758.07(B) or (C), or A.R.S. § 46-141(G), and who is not subject to registration as a sex offender in this state or any other jurisdiction, to provide supervised services directly to juveniles.

**R21-1-405. Effect of Proscribed Criminal History Disclosed or Discovered**

- A. A provider shall not allow an applicant or personnel who disclose or have been convicted of or are awaiting trial for an offense listed in A.R.S. § 41-1758.07(B) or (C), or A.R.S. § 46-141(G), or who are subject to registration as a sex offender in this state or any other jurisdiction to provide services directly to or have any contact with juveniles.
- B. A provider shall not allow an applicant or personnel who apply for a Good Cause Exception under A.R.S. § 41-619.55 to provide services directly to or have any contact with juveniles until the Good Cause Exception is granted.

**R21-1-406. Effect of Denied, Expired, Revoked or Suspended Level One Fingerprint Clearance Card**

Upon notification by the Department of the denial, expiration, revocation, or suspension of a Level One fingerprint clearance card, the provider shall immediately prohibit those personnel from providing services directly to or having any contact with juveniles.

**ARTICLE 5. SUBSTANTIATION OF REPORT FINDINGS****R21-1-501. Definitions**

The following definitions apply to this Article.

1. “Abuse” means the same as A.R.S. § 8-201(2).
2. “Amend the finding” means the same as A.R.S. § 8-811(L)(1).
3. “Case Record” means the Report of child abuse and neglect and related records the Department intends to submit at the hearing, including information from internal and external sources.
4. “Central Registry” means the information maintained by the Department of substantiated reports of child abuse or neglect for the purposes of A.R.S. § 8-804.
5. “Completed Investigation” means the case record and the proposed substantiated finding for the report of child abuse or neglect have been reviewed and approved by a supervisor and contains all of the information required to support a finding of proposed substantiation.
6. “Day” means a calendar day.
7. “Department” or “DCS” means the Arizona Department of Child Safety.



- 8. “Ineligibility Letter” means a notice sent from the Department via first class mail to a person alleged to have committed child abuse or neglect stating that the person is not entitled to an administrative hearing on the issue for one of the reasons listed in R21-1-505.
- 9. “Initial Notification Letter” means a notice sent from the Department via first class mail to an alleged perpetrator informing the person of the proposed finding of child abuse or neglect to be entered in the Central Registry and describing appeal rights to challenge the proposed finding.
- 10. “Legally excluded” means that an alleged perpetrator is not entitled to an administrative hearing under A.R.S. § 8-811, because:
  - a. A court or administrative law judge has made a finding of abuse or neglect based on the same allegations as in the proposed substantiated finding; or
  - b. A court has found that a child is dependent, or has terminated a parent’s rights based upon the same allegations of abuse or neglect as in the proposed substantiated finding.
- 11. “Neglect” or “neglected” means the same as A.R.S. § 8-201(24).
- 12. “Perpetrator” means a person who has committed child abuse or neglect under the standards required for listing in the Central Registry.
- 13. “Probable Cause” means some credible evidence that abuse or neglect occurred.
- 14. “Proposed Substantiated Finding” means the Department has investigated and found probable cause to support an allegation of abuse or neglect sufficient to place the alleged perpetrator's name in the Central Registry, subject to the alleged perpetrator's right to notice and a hearing.
- 15. “PSRT” means the Department's Protective Services Review Team, that administers the process described in A.R.S. § 8-811 for review and appeal of proposed substantiated findings of child abuse or neglect.
- 16. “Report For Investigation” means the same as A.R.S. § 8-201(30).
- 17. “Substantiated Finding” means a proposed substantiated finding that:
  - a. An administrative law judge found to be true by a probable cause standard of proof after notice and an administrative hearing and the Department Director accepted the decision;
  - b. The alleged perpetrator did not timely appeal; or
  - c. The alleged perpetrator was not entitled to an administrative hearing because the alleged perpetrator was legally excluded as defined in subsection (11).

**R21-1-502. Initial Notification Letter**

- A. When PSRT receives a proposed substantiated finding, PSRT shall notify an alleged perpetrator that:
  - 1. The Department intends to substantiate the proposed finding and place the alleged perpetrator’s name in the Central Registry;
  - 2. The alleged perpetrator may obtain a copy of the Report for Investigation; and
  - 3. The alleged perpetrator has the right to an administrative hearing before the person's name is entered in the Central Registry.
- B. The Department shall send the Initial Notification Letter to the alleged perpetrator no more than 14 days after the Completed Investigation.

**R21-1-503. Time Frame to Request an Administrative Hearing**

- A. An alleged perpetrator shall request a hearing on the proposed substantiated finding by the Department within 20 days from the mailing date of the Initial Notification Letter. The mailing date of the Initial Notification Letter is deemed the date of the letter.
- B. A request is timely if:
  - 1. The request is postmarked no later than 20 days from the mailing date of the Initial Notification Letter;
  - 2. The request is not postmarked, and the request is stamped as received by the Department within 20 days of the mailing date of the initial notification letter;
- C. If the Department determines a hearing request is untimely, the Department shall enter the alleged perpetrator’s name on the Central Registry unless:
  - 1. The delay is due to Department error;
  - 2. The delay is due to the postal service; or
  - 3. There is evidence the delay is due to circumstances beyond the reasonable control of the alleged perpetrator.
- D. To request an administrative timeliness review, the alleged perpetrator shall submit:
  - 1. An oral or written request to PSRT using the contact information on the initial notification letter;
  - 2. A statement explaining why the request is untimely; and
  - 3. Evidence of the cause of the untimeliness.

**R21-1-504. PSRT Review**

- A. Upon receiving a timely request for an administrative hearing, the PSRT shall within 60 days review the Case Record and shall:
  - 1. Determine there is no probable cause that the alleged perpetrator committed child abuse or neglect and amend the proposed substantiated finding to unsubstantiated; or
  - 2. Determine there is probable cause and send the alleged perpetrator a hearing notice.



- B.** The hearing notice shall include:
1. The date and time of the hearing;
  2. Notification of the right to request a settlement conference no later than 20 days before the hearing; and
  3. Notification of the right, upon oral or written request to the Department, to receive a copy of the case record, redacted as required by A.R.S. § 8-807.

**R21-1-505. Exceptions to Right to a Hearing**

- A.** An alleged perpetrator shall be eligible to have an administrative hearing unless the alleged perpetrator is legally excluded.
- B.** The Department shall mail an alleged perpetrator who is legally excluded an Ineligibility Letter within seven days of the PSRT determination of ineligibility for an appeal.
- C.** The Department shall not schedule an administrative hearing if the alleged perpetrator:
1. Is a party in a pending civil, criminal, or administrative proceeding in which the same allegations of child abuse or neglect are at issue; or
  2. Has a pending juvenile proceeding in which the same allegations of child abuse or neglect are at issue.
- D.** An alleged perpetrator whose hearing is not scheduled under subsection (C)(1) shall have six months from the date of the Ineligibility Letter to provide court documentation to the Department showing:
1. The results of the legal action;
  2. That the proceedings are still pending; or
  3. That the legal action did not determine the allegations of child abuse and neglect.
- E.** If the alleged perpetrator does not contact the Department within six months of the date of the Ineligibility Letter with the information listed in subsection (D), the Department shall enter the person's name and the finding in the Central Registry.
- F.** Notwithstanding subsection (E), if the alleged perpetrator contacts the Department after six months and provides the documentation in subsection (D) the alleged perpetrator may be entitled to a hearing subject to the provisions of R21-1-508.

**R21-1-506. Dependency Adjudication**

If the court in a proceeding described in A.R.S. § 8-811(F)(3), makes a finding of dependency based on child abuse or neglect against a person, the Department shall enter the person's name and the fact of the dependency finding in the Central Registry.

**R21-1-507. Director Review and Further Appeal After the Administrative Hearing**

- A.** An administrative law judge's decision is not final until the Department Director reviews the decision. The Director has 30 days to review the administrative decision. The Director may accept, reject or modify an administrative law judge's decision under A.R.S. § 41-1092.08.
- B.** A perpetrator may appeal the final administrative decision under A.R.S. Title 12, Chapter 7, Article 6.

**R21-1-508. Entry into the Central Registry**

- A.** If the perpetrator does not appeal the proposed substantiation, PSRT shall enter the perpetrator's name and the substantiated finding in the Central Registry.
- B.** If the administrative decision upholds the substantiation and the Department Director accepts the decision, PSRT shall enter the perpetrator's name and the substantiated finding in the Central Registry no later than 20 days after the date of the final administrative decision.
- C.** The Department shall not enter the person's name or the finding in the Central Registry if the:
1. Final administrative decision holds that the allegations of abuse or neglect are not substantiated; or
  2. A court ruling described in R21-1-505(C) finds no abuse or neglect by the alleged perpetrator.
- D.** If the court ruling described in R21-1-505(C) finds abuse or neglect by the perpetrator, the PSRT shall enter the person's name and the substantiated finding in the Central Registry.