

TITLE 21. CHILD SAFETY

CHAPTER 9. DEPARTMENT OF CHILD SAFETY – ADOPTION AGENCY LICENSING

Editor’s Note: Chapter 9 contains rules which were exempt from the regular rulemaking process under Laws 2014, 2nd Special Session, Ch. 1, Sec. 158. The law required the Department to post on its website proposed exempt rulemakings for a minimum of 30 days, at which time the public could provide written comments. In addition, at least two public hearings were held prior to the filing of the final exempt rules. Because the Department solicited comments on its proposed exempt rules, the rules filed with the Office of the Secretary of State are considered final exempt rules (Supp. 15-4).

ARTICLE 1. DEFINITIONS

Article 1, consisting of Section R21-9-101, made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

Section

R21-9-101. Definitions

ARTICLE 2. ADOPTION AGENCY LICENSING REQUIREMENTS

Article 2, consisting of Sections R21-9-201 through R21-9-240, made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

Section

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ARTICLE 1. DEFINITIONS

R21-9-101. Definitions

The definitions contained in A.R.S. § 8-101 and R21-5-301 apply in this Chapter. In addition, and where inconsistent with the definitions in R21-5-301, the following definitions apply in this Chapter:

1. “Adoption agency applicant” means the individual completing an application for a license to operate an adoption agency in Arizona on behalf of the individual or on behalf of the adoption agency. “Adoption agency applicant” also includes the adoption agency for which the individual is applying.
2. “Child restraint system” means an add-on child restraint system, a built-in child restraint system, a factory-installed built-in child restraint system, a rear-facing child restraint system, or a booster seat.
3. “Child welfare field” means an area of endeavor that provides a set of services designed to protect children and encourage family stability. These typically include investigation of alleged child abuse and neglect, foster care, adoption services and services aimed at supporting at-risk families so they can remain intact.
4. “Client” means a prospective adoptive parent and the child who is or would be the subject of an adoption performed by the adoption agency.
5. “Human services field” means any area of study that moves the human experience forward; including, psychology, sociology, social work, medicine, and education.
6. “Office of Licensing and Regulation” or “OLR” means the administration within DCS that is responsible for reviewing and evaluating applications for licensure; supervising and monitoring licensees; and completing all official licensing actions, including issuing, denying, amending, suspending, and revoking a license.
7. “Person” means a corporation, company, partnership, firm, association, or society, as well as a natural person.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

ARTICLE 2. ADOPTION AGENCY LICENSING REQUIREMENTS

R21-9-201. Who Shall Be Licensed

- A. Only the following may perform the adoption services listed in subsection (B):
1. A person licensed as an adoption agency;
 2. An employee of or an independent contractor for an adoption agency;
 3. A person acting under the direct supervision and control of an adoption agency; or
 4. The Department under A.R.S. § 8-131.

- B.** Only the persons or entities listed in subsection (A) may perform the following adoption services:
1. Recruiting a birth parent to place a child through a particular adoption agency;
 2. Accepting a birth parent's relinquishment and consent to adoption;
 3. Accepting physical custody of a child for placement into an adoption placement;
 4. Placing a child in an adoptive home;
 5. Monitoring, supervising, or finalizing an adoption placement; and
 6. Providing networking or matching services for a birth parent, an adoptive parent, or a child.
- C.** Notwithstanding subsections R21-9-201(A) and (B), attorneys licensed to practice law in the state of Arizona may participate in direct placement adoptions to the extent allowed by A.R.S. Title 8, Chapter 1, Article 1.

Historical Note

New Section made by final exempt rulemaking at 21
A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-202. Adoption Agency License; Initial Application Package; Fee

- A.** A person who wants to operate an adoption agency shall initiate the licensing process by completing an application package for an adoption agency license.
- B.** A complete application package for an initial adoption agency license shall contain the information and the supporting documentation listed in this subsection:
1. Identification and background information, including the following information for the adoption agency, facility, and administrators:
 - a. Name, address, telephone, and fax numbers for the adoption agency and all offices operated by the adoption agency;
 - b. Name, title, business address, telephone and fax numbers, and email address of:
 - i. The person who serves as the adoption agency administrator as prescribed in R21-9-211;
 - ii. The person who serves as the Social Services Director as prescribed in R21-9-212;
 - iii. The person with delegated authority to act when the adoption agency administrator is absent;
 - iv. The person in charge of each separate office;
 - v. The registered agent, if applicable; and
 - vi. Persons holding at least a 10 percent ownership interest in the adoption agency applicant;
 - c. The educational qualifications and work history for each person identified in R21-9-214, with that person's attached resume or employment application;
 - d. A list of the members of the adoption agency's governing body required by R21-9-210, including name, address, position in the adoption agency, term of membership, and any relationship to the adoption agency applicant;
 - e. If applicable, a written description of any proceedings pending or filed, brought against the adoption agency applicant or a person listed in R21-9-210 through R21-9-214, adoption agency employees, partners, or independent contractors, including those held in this state or another state or country; for denial, suspension, or revocation of a license or certificate for provision of:
 - i. Adoption services; or
 - ii. Social services, including child welfare, child care, or any other programs or services to children, elderly, or vulnerable adults; and
 2. Business organization.
 - a. An organizational chart for the adoption agency and each separate office, showing administrative structure, lines of authority, and staff;
 - b. Business organization documents appropriate to the adoption agency applicant, including:
 - i. Articles of incorporation,
 - ii. By-laws,
 - iii. Articles of organization, or
 - iv. Partnership documents, such as the Partnership Agreement;
 - c. Annual reports for the preceding three years if the adoption agency has been in existence for three or more years;
 - d. For corporations, or limited liability companies, a certificate of good standing from the Arizona Corporation Commission;
 - e. A copy of any license or authorization to perform adoption services in a foreign country; and
 - f. A consent allowing any out-of-state or foreign licensing authority to release information on the adoption agency applicant to OLR.
 3. Staff.
 - a. A list of the adoption agency applicant's paid or unpaid staff, including:
 - i. Name,
 - ii. Position or title,
 - iii. Degrees,
 - iv. Certificates,
 - v. Licenses held,
 - vi. Business address,
 - vii. Date of hire,
 - viii. Date of submission for fingerprinting and criminal background clearance, and
 - ix. If contracted with the Department, a Central Registry check;
 - b. Obtain and provide to the Department evidence that all staff, interns, and volunteers have submitted fingerprints and criminal background information as prescribed in A.R.S. § 46-141, R21-9-214, and R21-9-215.
 4. Financial Stability.
 - a. A written, proposed operating budget for startup and a projected or annual budget for the first year of operation;
 - b. Verifiable documentation of funds available to pay start-up costs; the funds shall be in the form of cash or written authorization for a line of credit;
 - c. Verifiable documentation of funds available to pay operating expenses for the first three months of operations; the funds shall be in the form of cash or written authorization for a line of credit;
 - d. Verifiable documentation of financial resources to operate in accordance with the proposed operating budget for the remaining nine months of the licensing year; the resources may include:

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- i. Cash;
 - ii. Contracts for placement;
 - iii. Donations;
 - iv. Letters of commitment from financial backers or investors;
 - v. Grants, and
 - vi. Authorization for a line of credit;
 - e. If the adoption agency applicant, the adoption agency administrator, a Board Member, or any adoption agency employee or partner has operated any adoption agency in this state or any other state during the past 10 years, the most recent financial statement and financial audit for that adoption agency, unless the most recent statement or audit is more than 10 years old; and
 - f. A certificate of insurance, or letter of commitment from an insurer, showing that the adoption agency applicant has insurance coverage as prescribed in R21-9-223.
5. Program.
 - a. Informational, marketing, or advertising material about the adoption agency;
 - b. Program description, including:
 - i. All adoption services the adoption agency applicant intends to provide;
 - ii. The fee the adoption agency applicant will charge for each service;
 - iii. The cost to the adoption agency applicant of providing each service;
 - iv. The time in the adoption process when the adoption agency applicant will require a client to pay the fee described in R21-9-231;
 - v. The anticipated number of clients the adoption agency applicant will serve; and
 - vi. The methods the adoption agency applicant will use to recruit birth parents and prospective adoptive parents; and
 - c. A written explanation of how the adoption agency applicant will provide adoption services, including:
 - i. The number and description of staff who will provide the service, and
 - ii. Staff training requirements.
 6. Documentation, Forms, and Notices. Samples of all documents, forms, and notices, which the adoption agency applicant will use with or provide to a client, including:
 - a. Adoption agency application for services;
 - b. Adoptive parent certification application;
 - c. Fee policy and schedule as prescribed by R21-9-231;
 - d. Sample birth parent relinquishment and consent form;
 - e. Informational or advertising brochures;
 - f. Sample fee agreement;
 - g. Sample birth parent agreement letter;
 - h. Intake form;
 - i. Sample case file;
 - j. Court report format; and
 - k. Statistical report.
 7. Sample Files. A sample of the type of filing format the adoption agency applicant will utilize for personnel files as prescribed in R21-9-216, and client files as prescribed in R21-9-226 and R21-9-227.
 8. Policies and Procedures. Copies of the adoption agency applicant's internal policies and operations manual.
 9. Physical site and environment.
 - a. The floor plan for each office or location designated for conducting private discussions, interviews, and meetings;
 - b. A description of the adoption agency applicant's computer security system and the adoption agency applicant's confidentiality safeguards; and
 - c. Registration and inspection certificates for all vehicles used to transport a client or children.
 10. Miscellaneous.
 - a. A signed, written statement authorizing OLR to investigate the adoption agency applicant;
 - b. The signature, under penalty of perjury, of the adoption agency administrator or authorized person submitting the application, attesting to the truthfulness of the information contained in the application;
 - c. The date of application; and
 - d. Board or partnership meeting minutes for the past three years if the adoption agency has been in existence for three or more years.
 11. Fee. Pay a non-refundable, initial application fee of \$400.
- C.** An adoption agency that does not have or maintain all or part of the supporting documentation listed in this Section shall so indicate in a written statement filed with the application.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-203. Additional Requirements for Licensing; Out-of-state and Foreign Adoption Agencies

- A.** An out-of-state adoption agency or an adoption agency that conducts foreign adoptions that wishes to become licensed in Arizona as an adoption agency shall comply with all requirements of R21-9-202.
- B.** In addition to the documentation required by R21-9-202, the out-of-state or foreign adoption agency applicant shall file the following documents with OLR:
1. A copy of each license or authorization to perform adoption services the adoption agency applicant holds in states other than Arizona or in a foreign country;
 2. A signed, written consent allowing any out-of-state or foreign licensing authority to release information on the adoption agency applicant to OLR; and
 3. A written description of any license suspension or revocation proceedings pending, filed, or brought against:
 - a. The adoption agency applicant;
 - b. The adoption agency applicant's owner, if the adoption agency applicant is acting as an individual or a sole proprietor;
 - c. The partners of the adoption agency applicant, if the adoption agency applicant is a partnership; and
 - d. The directors, officers, and shareholders holding more than a 10 percent ownership interest in the adoption agency applicant, if the adoption agency applicant is a corporation.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-204. Department Procedures for Processing License Applications; Licensing Time Frames

- A.** In this Section, a complete application package means:
1. For an initial license, the items listed in R21-9-202 for an in-state adoption agency and R21-9-203 for an out of state adoption agency or an adoption agency engaged in foreign adoptions; or
 2. For a renewal license, the items listed in R21-9-207.

- B. Within 15 days of receiving an initial or renewal license application package, OLR shall conduct an administrative review to determine whether all required documentation and information has been submitted. Within the 15-day administrative review time-frame:
1. If the application is complete, OLR shall immediately move the application forward for a substantive review; or
 2. If the application is incomplete, OLR shall issue a Notice of Incomplete Application to the adoption agency applicant containing a list of items and information needed to complete the application.
 - a. The adoption agency applicant shall have 60 days to supply the missing items or information to OLR.
 - b. The time-frame for the administrative completeness review shall be suspended from the date OLR issues the Notice of Incomplete Application to the date that OLR receives the missing item or information.
 - c. If the adoption agency applicant does not supply the requested items or information within 60 days of the date of the Notice of Incomplete Application, OLR shall close the file. Once closed, the adoption agency applicant may reapply for licensure.
 - d. If the adoption agency applicant supplies the required items and information to OLR within 60 days, OLR shall conduct a substantive review of the application.
- C. An adoption agency applicant whose file has been closed under subsection (B)(2)(c) and who reapplies no later than 90 days after the date of the notice closing the application, may reopen the application provided:
1. The Adoption agency applicant schedules a conference with OLR, and
 2. The Adoption agency applicant provides to OLR the missing information or items identified in the Notice of Incomplete Application.
- D. Within the 90 days following the administrative completeness review of an application, and if the application is complete, OLR shall complete a substantive review to evaluate the adoption agency applicant's fitness for licensure. Within the 90-day substantive review time-frame, OLR:
1. May request that the adoption agency applicant provide additional information if needed to evaluate the suitability of the adoption agency applicant for licensure.
 - a. The adoption agency applicant shall have an additional 15 days to provide the information to OLR.
 - b. The time-frame for the substantive review shall be suspended from the date OLR requests additional information to the date OLR receives the information.
 2. Shall make the licensing decision under R21-9-205.
- E. Within an overall time-frame of 105 days upon receipt of a complete application, OLR shall:
1. Complete an administrative review of an application,
 2. Complete a substantive review of an adoption agency applicant's fitness, and
 3. Notify the adoption agency applicant of the decision to issue or deny a license.
- F. For the purpose of A.R.S. § 41-1073, OLR establishes the following licensing time-frames for both an initial and renewal license:
1. Administrative completeness review time-frame: 15 days;
 2. Substantive review time-frame: 90 days; and
 3. Overall time-frame: 105 days.

Historical Note

New Section made by final exempt rulemaking at 21

A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-205. License: Issuance; Denial

- A. Prior to issuing a license to an adoption agency applicant, OLR shall:
1. Review the application package;
 2. Inspect the adoption agency applicant's place of business, records, accounting records, and system for client files;
 3. Interview the adoption agency applicant's staff, as necessary to familiarize the OLR representative with the adoption agency applicant's operations; and
 4. For out-of-state adoption agency applicants, and foreign adoption agencies, verify that the adoption agency applicant is licensed out-of-state or authorized to conduct foreign adoptions, as applicable, and investigate any complaints asserted against the adoption agency applicant in other states or countries.
- B. Prior to issuing a license, OLR may submit the adoption agency applicant's start-up, operating, or annual budget required in R21-9-202 for audit verification.
- C. OLR may issue a license to an adoption agency applicant who:
1. Has complied with all application and inspection requirements of this Chapter; and
 2. Demonstrates that it:
 - a. Has sufficient capital to pay all start-up costs;
 - b. Has sufficient capital, personnel, expertise, facilities, and equipment to provide the services it plans to offer;
 - c. Does not intend to charge unreasonable fees; and
 - d. Complies with the requirements of this Chapter and A.A.C. Title 21, Chapter 5, Article 4.
- D. OLR may deny a license to:
1. An adoption agency applicant that had a license revoked by any state or foreign country;
 2. An adoption agency applicant that employs personnel whose fingerprint background check shows that the employee has been convicted of or is awaiting trial on an offense listed in A.R.S. § 46-141;
 3. An adoption agency applicant that does not comply with one or more of the standards listed in subsection (C);
 4. An adoption agency applicant that has intentionally or recklessly jeopardized the well-being of its client;
 5. An adoption agency applicant that has a history or pattern of violations of applicable adoption statutes or rules; or
 6. An adoption agency applicant that violates the ICPC or ICWA during a licensing year.
- E. When OLR denies a license, OLR shall send the adoption agency applicant written notice explaining the reason for denial, and the adoption agency applicant's right to seek a fair hearing.

Historical Note

New Section made by final exempt rulemaking at 21
A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-206. License: Term; Non-transferability

- A. OLR shall issue a license only to the adoption agency for which application is made and for the location shown on the application.
- B. A license expires one year from the date of issuance.
- C. A license shall not be transferred or assigned and shall expire upon a change in adoption agency ownership.
- D. For the purpose of this Section, a change in ownership shall include the following events:
1. Sale or transfer of the adoption agency,
 2. Bulk sale or transfer of the adoption agency's assets or liabilities,

3. Placement of the adoption agency in the control of a court appointed receiver or trustee,
4. Bankruptcy of the adoption agency,
5. Change in the composition of the partners of an adoption agency organized as a partnership,
6. Sale or transfer of a controlling interest in the stock of a corporate adoption agency, or
7. Loss of an adoption agency's nonprofit status.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-207. Application for License Renewal; Fee

- A. No earlier than 90 days and no later than 45 days prior to the expiration date of a license, an adoption agency may apply to OLR for license renewal.
- B. The renewal application shall be on a Department form containing the information listed in R21-9-202 and R21-9-203, as applicable.
- C. The adoption agency shall submit evidence that each current employee has obtained a new fingerprint clearance card every six years following original clearance.
- D. An adoption agency shall submit copies of the supporting documents listed in R21-9-202 if the adoption agency has changed, amended, or updated such documents since the adoption agency last renewed its license.
- E. With a renewal application, the adoption agency shall also submit a renewal fee of \$225 and the following documentation:
 1. A current financial statement;
 2. A copy of the adoption agency's current operating budget and a recent audit report required by R21-9-222 or if applicable, the documentation required by R21-9-222 subsection (C);
 3. Copies of any written complaints the adoption agency has received about its performance during the expiring license year; and
 4. A written description of any changes in program services or locations, or the population served by the adoption agency.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-208. Renewal License: Issuance

- A. OLR shall process a renewal application package pursuant to the procedures described in R21-9-204 and R21-9-205.
- B. In addition to conducting an investigation as prescribed in R21-9-205, OLR may:
 1. Interview adoption agency clients and references,
 2. Observe adoption agency staffings, and
 3. Conduct field visits to the adoption agency offices.
- C. In determining whether to renew a license, OLR may consider the licensee's past history from other licensing periods, and shall consider a repetitive pattern of violations of applicable adoption statutes or rules as evidence that the adoption agency is unable to meet the standards for obtaining a license.
- D. OLR may renew an adoption agency's license when the adoption agency:
 1. Demonstrates that it meets the standards described in this Chapter,
 2. Has complied with the requirements of this Article and A.A.C. Title 21, Chapter 5, Article 4 during the expiring period of licensure, and
 3. Has corrected any prior circumstances that resulted in non-compliance status.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-209. Amended License

- A. An adoption agency that seeks to change its name, address, or offices, without a change in ownership, shall apply to OLR for an amended license at least 14 days prior to the effective date of the change.
- B. The application shall be in writing and shall specify the information to be changed.
- C. So long as the change does not cause the adoption agency to fall out of compliance with the standards listed in this Article and A.A.C. Title 21, Chapter 5, Article 4, OLR shall issue an amended license.
- D. The amended license shall expire at the end of the adoption agency's current licensing year.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-210. Governing Body

- A. The adoption agency shall have a governing body to oversee the operations, policies, and practices of the adoption agency and its facilities.
- B. The governing body shall be:
 1. The board of directors for any adoption agency formed as a corporation;
 2. The individual owner of any adoption agency that is a sole-proprietorship;
 3. The members of a limited liability company; or
 4. The partners in a partnership.
- C. The governing body shall:
 1. Establish the adoption agency's policies and oversee the implementation of those policies;
 2. Ensure that the adoption agency has the capital, physical facilities, staff, and equipment to effectively implement the adoption agency's policies and adoption program;
 3. Ensure that the adoption agency complies with:
 - a. All legal agreements to which the adoption agency is a party; and
 - b. All relevant federal, state, and local laws;
 4. Review and approve the adoption agency's annual operating budget required by R21-9-221 and the annual audit required by R21-9-222, or, if applicable, the documentation required by R21-9-222 subsection (C); and
 5. Notify OLR before making any substantial changes to the adoptions program set out in the adoption agency's operations manual.
- D. The adoption agency shall advise OLR in writing of any changes in composition of the governing body within 30 days of the change.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-211. Adoption Agency Administrator

- A. The adoption agency shall have an administrator who is responsible for the adoption agency's business operations.
- B. The Administrator shall have the education and experience described in this subsection.
 1. A bachelor's degree from an accredited college or university and two years of professional experience in a human services field, one year of which shall have been in a supervisory or administrative position;
 2. A master's or doctorate degree from an accredited graduate school in business, public administration, or a human

- services field, and one year of professional experience in the human services field; or
3. Five years of experience as the administrator in a program in a human services field.
- C. The Administrator shall:
1. Oversee development and implementation of the adoption agency's policy and procedures for program and fiscal operations;
 2. Ensure that the adoption agency achieves and maintains compliance with the requirements of this Article;
 3. Oversee hiring, evaluation, and discharge of adoption agency personnel in accordance with the adoption agency's established personnel policies and this Article; and
 4. Establish and supervise working relationships with other social service agencies within the community.
- D. An Administrator who directly supervises adoption activities shall also meet the requirements for a social services director prescribed in R21-9-212.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-212. Social Services Director

- A. The adoption agency shall have a social services director who is responsible for the adoption agency's casework and family services.
- B. The social services director shall have the following education and experience:
 1. A bachelor's degree in social work or a related human services field from an accredited college or university and three years of professional experience in services to children and families, two years of which shall be in adoption services;
 2. A master's degree in social work or a related human services field from an accredited college or university and a minimum of two years of professional experience in services to children and families; or
 3. Five years of experience as the director in a program in a child welfare field.
- C. The social services director shall, either personally or through a designee:
 1. Supervise, manage, train, and evaluate all social work staff members and consultants;
 2. Approve decisions regarding family and child eligibility for service, maternity and child care, transportation and placement arrangements, finalization, and any other changes in a child's legal status; and
 3. Implement the adoption agency's adoption program and services.
- D. If the social services director delegates responsibility under subsection (C), the social services director shall personally supervise the designee and shall oversee the performance of the duties described in subsection (C).
- E. If the social services director performs the duties of an adoption agency administrator, the director shall also meet the requirements for an adoption agency administrator prescribed in R21-9-211.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-213. Social Workers

- A. The adoption agency shall have social workers sufficient to meet the ratio requirements prescribed in R21-9-219.
- B. A social worker shall have the following qualifications:

1. A bachelor's degree in social work or a related human services field from an accredited college or university and two years of professional experience in a human services field;
 2. A master's degree in social work or in a related human services field from an accredited college or university;
 3. An associate's or a two-year degree from an accredited educational institution in a human services or child welfare field and five years' experience engaged in the activities listed in subsection (C); or
 4. Ten years experience in a human services or a child welfare field engaged in the activities listed in subsection (C).
- C. A social worker shall:
1. Maintain or supervise the maintenance of up-to-date case records on cases assigned to the worker;
 2. Prepare certification and placement reports and home studies for adoptive applicants and parents, and such other reports as the court may require; and
 3. Provide pre-placement, placement, post-placement, or post-adoption services to a client.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-214. Adoption Agency Employees: Hiring; References; Fingerprinting

- A. An adoption agency shall obtain an application for employment or a resume from each employee, or contracted employee. The application or resume shall contain, at a minimum, the following information on the applicant:
 1. Name and current address and telephone number;
 2. Educational history;
 3. Degrees or certifications held;
 4. Work history for five years prior to the date of the application, and the reasons for leaving each prior job;
 5. A summary of all prior experience the applicant has had in the area for which the applicant is seeking employment;
 6. A minimum of three professional references, preferably of prior or current supervisors;
 7. A minimum of three personal references; and
 8. A list of any criminal convictions, excluding minor traffic violations.
- B. An adoption agency shall not hire an applicant for employment until:
 1. The adoption agency has personally contacted at least two of the applicant's professional references and one of the applicant's personal references;
 2. The adoption agency has verified that the applicant has the skills and training necessary to perform the task for which the adoption agency is hiring the applicant;
 3. The applicant has submitted to a fingerprint and criminal records check as required by A.R.S. § 46-141 and A.A.C. Title 21, Chapter 1, Article 4; and
 4. If contracted with the Department, the applicant has passed a Central Registry check.
- C. The adoption agency shall not knowingly hire or retain any staff, member, including a volunteer or intern, who is awaiting trial on, or has been charged with, been convicted of, pled guilty to, or entered into a plea agreement regarding an offense listed in A.R.S. § 46-141.
- D. The adoption agency shall ensure that any staff required to have a fingerprint clearance card shall obtain a new card every six years after initial issuance.

- E. The adoption agency shall have written job descriptions for all employee and volunteer positions in the adoption agency. The job descriptions shall include the essential functions of the job and any minimum qualifications or training required for the position.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-215. Adoption Agency Volunteers; Interns

An adoption agency that uses volunteers or student interns shall follow the requirements of this Section.

1. An appropriate employee shall directly supervise each volunteer or intern. As used in this subsection, the term “appropriate” shall mean adoption agency personnel with skills and training to guide the volunteer or intern in the performance of the designated tasks.
2. The adoption agency shall subject each volunteer or intern who renders direct services to a client, to the same fingerprint clearance card requirements and reference checks the adoption agency performs on adoption agency employees under R21-9-214.
3. For each volunteer or intern, the adoption agency shall maintain a record of fingerprint clearance, reference check information, and any training provided. The adoption agency shall retain the record for three years following the volunteer’s or intern’s termination with the adoption agency.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-216. Personnel Records

- A. The adoption agency shall maintain a personnel file for each adoption agency employee. The file shall contain:
1. The employee’s resume or written application for employment;
 2. Documentation of the reference checks required by R21-9-214 and R21-9-215;
 3. Evidence of a fingerprint clearance card and criminal records clearance;
 4. Results of a Central Registry check;
 5. A record of the expiration date and number of the employee’s driver’s or chauffeur’s license, if the employee transports a client;
 6. Copies of the employee’s professional credentials or certifications, if relevant to the employee’s job functions;
 7. Documentation of initial and ongoing training the employee has received;
 8. Periodic job performance evaluations; and
 9. Dates of employment and separation, and reasons for separation.
- B. The adoption agency shall maintain employee personnel records for at least three years following the employee’s separation from the adoption agency.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-217. Training Requirements

- A. An adoption agency shall provide initial and ongoing training for professional employees.
1. Initial training shall include orientation to the adoption agency and any of the adoption agency’s and the Department’s policies and procedures that are relevant to the employee’s job.

2. Ongoing training shall include a minimum of 14 hours of annual training in the following, or related, subject areas:
 - a. Adoption statutes and rules,
 - b. Adoption agency and Department policies and procedures,
 - c. Confidentiality, and
 - d. The specific subject matter of the employee’s job.
- B. The adoption agency shall document all training in the employee’s personnel file.
- C. As used in this Section, “professional employee” shall mean any person who renders services directly to a client.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-218. Contracted Services

- A. When an adoption agency provides adoption services through persons who are not adoption agency employees, volunteers, or interns, the adoption agency shall retain only external professionals or consultants who are certified, licensed, or otherwise meet the qualifications described in A.A.C. Title 21, Chapter 5, Article 4, to provide such services.
- B. The adoption agency shall not require a client to use medical, legal, psychological, psychiatric, or other professionals or consultants used or recommended by the adoption agency. The adoption agency may use consultants or persons selected by the adoption agency’s client, so long as the consultant designated by the client has the education, experience, or certification required to render the service.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-219. Staffing Ratios

- A. An adoption agency shall have sufficient staff to satisfy:
1. All statutory requirements for provision of adoption services;
 2. All applicable requirements of this Article and A.A.C. Title 21, Chapter 5, Article 4; and
 3. All requirements included in the adoption agency’s own operating and procedural manuals, policies, or guidance documents.
- B. To determine sufficiency under subsection (A), OLR shall consider:
1. Complaints made against the adoption agency;
 2. The complexity of the individual needs of the clients served by the adoption agency;
 3. The professional training and experience of the adoption agency’s staff;
 4. The specific functions assigned to individual adoption agency staff;
 5. The geographic area served by the adoption agency and any travel time required for adoption agency staff;
 6. The respective amounts of time staff devote to various functions and responsibilities, including provision of services, court appearances, case documentation, professional training and development, and administrative tasks; and
 7. Other similar factors bearing on caseload distribution.
- C. Notwithstanding any other provision of this Article, a social worker whose caseload is predominantly a caseload of children with special needs shall not have a caseload in excess of 20 children.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-220. Operations Manual

- A.** An adoption agency shall have a written operations manual, which shall include:
1. A statement of the adoption agency's purpose, philosophy, and program;
 2. A list of any eligibility requirements for a client;
 3. A description of services provided to clients and the name of any person or entity providing the service, if different from the adoption agency and its employees;
 4. An organizational chart explaining the adoption agency's lines of authority;
 5. Intake policies and procedures;
 6. The operational procedures the adoption agency follows for delivery of services;
 7. Confidentiality policies and procedures;
 8. Staff training policy;
 9. Policy for use of volunteers;
 10. Policy on student and intern placement;
 11. Policy and procedures to be followed in the event of adoptive placement disruption;
 12. Policy for recruitment and selection of adoptive families; and
 13. Policy for transferring files if the adoption agency goes out of business, including designated personnel or positions to handle the transfer.
- B.** The adoption agency shall make the operations manual available to all adoption agency personnel and shall ensure that personnel are familiar with and trained in those policies and procedures relevant to their job functions.
- C.** The adoption agency shall make the operations manual available for review by a client, upon request.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-221. Adoption Agency Operations Budget; Financial Records

- A.** Before the start of the adoption agency's fiscal year, the Governing Body shall adopt a budget that shall reflect sufficient funds to pay the costs of the adoption agency's program and shall be based on the audit report prepared in compliance with R21-9-222, or, if applicable, the documentation required by R21-9-222 subsection (C).
- B.** The adoption agency shall operate within the budget adopted by the Governing Body.
- C.** The adoption agency shall maintain financial records of receipts, disbursements, assets, and liabilities. The adoption agency shall maintain its financial records in accordance with generally accepted accounting principles; the records shall accurately reflect the adoption agency's financial position.
- D.** The adoption agency shall maintain records showing the following information:
1. Each adoptive parent's original contract date with the adoption agency;
 2. Fees that each adoptive parent has paid to the adoption agency and the date of such payments; and
 3. Fees that the adoption agency has charged to the adoptive parent.
- E.** The adoption agency shall make all records described in this Section available for inspection by OLR at periodic inspections, or at other reasonable times upon Department request.
- F.** The adoption agency shall retain financial records for ten years, including the records involved in an audit, following completion of the audit.

Historical Note

New Section made by final exempt rulemaking at 21

A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-222. Annual Financial Audit

- A.** An adoption agency shall obtain an annual, fiscal year-end, financial audit by an independent certified public accountant. The accountant shall conduct the audit in accordance with generally accepted auditing standards.
- B.** The adoption agency shall obtain from the auditor a written audit report that shall include the following financial information:
1. Income statement,
 2. Balance sheet,
 3. Statement of cash flows,
 4. Statement of monies or other benefits the adoption agency has paid or transferred to other business entities or individuals affiliated with the adoption agency, and
 5. A record of any financial transactions between the adoption agency and any other adoption agency.
- C.** Notwithstanding subsections (A) and (B), for adoption agencies with an annual income of less than \$250,000, rather than submit the financial audit required in subsections (A) and (B), the adoption agency shall:
1. Provide verifiable information that allows OLR to evaluate the adoption agency's financial stability.
 2. Maintain acceptable documentation that includes:
 - a. Annual fiscal audit;
 - b. Six month current bank statement;
 - c. Statements from lines of credit; and
 - d. The previous year's tax return.
- D.** OLR may request additional information that would allow OLR to evaluate the adoption agency's financial stability.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-223. Insurance Coverage

- A.** An adoption agency contracted with the State shall have insurance coverage as required by the State contract in addition to the requirements of this Section.
- B.** An adoption agency shall have insurance coverage that provides protection against financial loss as required by this Section, including insurance coverage with the minimum scope and limits of liability not less than those stated below.
1. Commercial General Liability – Occurrence Form Coverage including bodily injury, property damage, personal injury, and broad form contractual liability:
 - a. General Aggregate \$2,000,000;
 - b. Products – Completed Operations Aggregate \$1,000,000;
 - c. Personal and Advertising Injury \$1,000,000;
 - d. Blanket Contractual Liability – Written and Oral \$1,000,000;
 - e. Fire Legal Liability \$50,000;
 - f. Each Occurrence \$1,000,000; and
 - g. The policy shall include coverage for sexual abuse and molestation.
 2. Automobile Liability. The policy shall cover bodily injury and property damage for any owned, hired, or non-owned vehicle used in the performance of licensee's operations and shall have a Combined Single Limit (CSL) coverage of \$1,000,000.
 3. Worker's Compensation and Employers' Liability.
 - a. Workers' Compensation coverage shall comply with state statutory requirements.
 - b. Employers' Liability.
 - i. Each Accident \$500,000;
 - ii. Disease – Each Employee \$500,000; and

- iii. Disease – Policy Limit \$1,000,000.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-224. Physical Space Requirements; Transportation of a Child

- A.** An adoption agency shall not discuss confidential information with a client in a public setting.
- B.** An adoption agency shall have available a physical space in Arizona that provides privacy and security.
- C. Meeting Space.**
1. Available space. The adoption agency shall maintain at its offices in Arizona or have available a local meeting space for interviewing children and families and for supervisory conferences.
 2. Confidentiality. The adoption agency meeting space shall provide privacy for interviews and discussion of confidential information.
 3. Safety. The adoption agency meeting space shall comply with any building, health, fire or other codes in effect in the jurisdiction where it is located.
 4. Telephone. The adoption agency meeting space shall have telephone service.
- D. Records Storage Space.**
1. The adoption agency shall maintain or have available a physical space for records storage that protects confidentiality and provides security.
 2. The records storage space may be a space for hard copy records or a secure server with encryption capabilities for digital records.
 3. The adoption agency storage space shall provide security against theft, unauthorized release, security breach, damage, and loss of records.
 4. The adoption agency storage space shall allow for immediate protection of confidential information.
 5. If the adoption agency contracts for storage space, the contract shall include:
 - a. A provision that all records are owned solely by the adoption agency and shall not be used or disseminated by the contractor in any way;
 - b. A provision that the contractor shall return all records immediately upon cessation of the contract; and
 - c. A provision requiring security against theft, unauthorized release, security breach, damage, and loss of records.
- E. Transportation.** When an adoption agency transports a child or directs the transportation of a child, the adoption agency shall ensure that the vehicle, at a minimum:
1. Is maintained in safe operating condition;
 2. Is properly licensed, registered, and has liability insurance; and
 3. Has passenger safety restraints available and:
 - a. Each child less than the age of five years or weighing less than 40 pounds is properly secured in a child car seat and child restraint system that is appropriate to the height, weight, and physical condition of the child;
 - b. Each child five to eight years of age who weighs more than 40 pounds, but is less than four feet nine inches in height is properly secured in a child restraint system that is appropriate to the height, weight, and physical condition of the child;
 - c. Each child not covered by subsections (a) and (b) is properly secured with a seat belt;

- d. Each child with a disability that prevents the child from maintaining head and torso control while sitting is secured in a car bed, harness, or other device designed to protect the child during transportation; and
- e. If a child is transported in a wheelchair, the child is properly secured with a floor-mounted seat belt, and the wheelchair is properly immobilized using lock-down devices.

- F.** An adoption agency shall not leave a child unattended during transportation if the child:
- a. Is less than seven years of age;
 - b. Has a developmental disability; and
 - c. Is more than seven years of age if the adoption agency has determined, and documented in the child's record, that the child is physically and emotionally incapable of traveling alone;
- G.** The adoption agency shall ensure that the adoptive parent has all of the equipment in place and properly installed to meet the requirements of subsection (E) prior to placement.
- H.** An adoption agency shall ensure the following safety requirements for drivers selected by the adoption agency to transport a child:
1. The driver has a valid driver license; and
 2. The driver practices safe, defensive driving and obeys all traffic laws.
- I.** A child shall not be transported in a truck bed, cargo area, camper, or in a trailer attached to a motor vehicle.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-225. Protecting Confidentiality of Adoption Records

The adoption agency shall have and follow a written policy for the maintenance and security of adoption records. The policy shall be consistent with A.R.S. §§ 8-120, 8-121, and 36-2903.01(Q) and shall specify:

1. The personnel responsible for supervision and maintenance of records;
2. The persons who shall and may have access to the records;
3. The procedures for immediately securing confidential information;
4. The procedures for authorizing release of records;
5. The procedures for release of records;
6. The procedures for security breach or loss of adoption records; and
7. The procedures for transferring records.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-226. Recordkeeping Requirements: Adoptive Children

The adoption agency shall maintain a case record for each adoptive child. Except as otherwise provided in A.R.S. § 8-129, the record shall be divided into two sections as follows:

1. Non-identifying information as required by A.R.S. § 8-129; and
2. Identifying information which shall include:
 - a. Tapes, videos, or photos of the adoptive child or birth parent;
 - b. Legal documents and reports required for adoption;
 - c. Social, physical, mental, and educational history of the child's birth family;

- d. Social, physical, mental, and educational history of the adoptive child; and
- e. A summary of all action taken to prepare the child for placement in the adoptive home.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-227. Recordkeeping Requirements: Adoptive Parents

The adoption agency shall maintain a case record for each adoptive parent. If the adoptive parent is a member of the same family as another adoptive parent, the adoption agency can maintain one file for the adoptive family. The file shall include:

1. Documentation showing that the adoptive parent received the orientation described in R21-5-403,
2. The adoptive parent's application for certification,
3. The adoptive parent's certification report and any recertification reports,
4. A copy or description of the non-identifying information the adoption agency has provided to the adoptive parent pursuant to A.R.S. § 8-129(A), and
5. A summary of the adoptive placement decision and the pre-placement and post-placement contacts with the adoptive family and the adoptive child.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-228. Reporting Requirements: Abuse; Adoption Agency Change; Change of Circumstances of a Child or Family

- A. During the period of time that an adoption agency is providing services to an adoptive child or family, the adoption agency shall:
 1. Immediately report any suspected or alleged incident of abuse or neglect of an adoptive child to the Department; and
 2. Immediately notify an adoption agency licensing representative in OLR if an adoptive child dies or suffers a serious illness, bodily injury, or psychiatric episode.
- B. An adoption agency shall notify OLR orally of any of the following changes or events within 24 hours after the adoption agency learns of their occurrence and shall submit written notification to OLR within seven days:
 1. Permanent or temporary closure of the adoption agency or any part thereof;
 2. A criminal conviction or plea agreement involving any adoption agency staff member, including a volunteer and intern, excluding minor traffic violations;
 3. Filing of a lawsuit against the adoption agency;
 4. Filing of a lawsuit against adoption agency personnel when the lawsuit relates to or is likely to adversely affect the provision of adoption services;
 5. Damage to adoption agency facilities that substantially disrupts the program or the adoption agency's accessibility to a client; and
 6. Knowledge of any child placement that the adoption agency reasonably believes is not permitted by law.
- C. The adoption agency shall notify OLR in writing at least 30 calendar days prior to any of the following proposed changes and events, if known:
 1. Any plans to reorganize the adoption program that would involve changes in target population, geographic area, services, or eligibility, and the reasons for the changes;
 2. Any change in the identity of the adoption agency administrator or social services director; or
 3. Any change in ownership as described in R21-9-206(D).

D. Change of Circumstances of a Child or Family.

1. When there is a change in the adoptive circumstances of a child or family listed on the Adoption Registry, the adoption agency shall notify the Department of the change within five work days of receipt of information about the changed circumstances.
2. For the purpose of this subsection, a change in adoptive circumstances include the following events:
 - a. Placement of a child,
 - b. Loss or renewal of certification, and
 - c. Disruption or failure of a placement.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-229. Closure of Adoption Agency: Record Requirements

- A. An adoption agency shall not destroy any files, records, reports, and other papers not filed in or in the possession of the court for 99 years;
- B. If an adoption agency ceases operations, the adoption agency shall do all of the following:
 1. Transfer the documents described in subsection (A) of this section to the Department or to another adoption agency in this state if the documents concern a matter that is closed;
 2. Transfer the documents described in subsection (A) of this section to another adoption agency in this state if the documents concern a matter that is open;
 3. Notify the Department of the transfer of any documents to another adoption agency in this state; and
 4. Notify all adoptive parents whose files the adoption agency is transferring to the Department or another adoption agency in this state of the transfer.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-230. Birth Parent: Service Agreement; Prohibitions

- A. Before providing services to a birth parent, an adoption agency shall enter into a signed written agreement with the birth parent. The agreement shall:
 1. Describe all services the adoption agency shall provide to the birth parent;
 2. Contain an explanation in plain language describing any monies that an adoptive parent may pay to a birth parent under A.R.S. § 8-114, including that a birth parent may only receive payments up to \$1,000 without court approval;
 3. Contain an itemized statement describing the nature, purpose, and amount of any payments the birth parent shall receive through the adoption agency or any entity affiliated with the adoption agency under A.R.S. § 8-114;
 - a. If the actual amount under subsection (3) is not known, the adoption agency shall describe how the amount shall be calculated, and
 - b. Include amounts only for reasonable and necessary expenses incurred in connection with the adoption under A.R.S. § 8-114.
- B. Before or at the time of entering into a birth parent agreement with a birth mother, the adoption agency shall advise the birth mother of her obligations under A.R.S. § 8-106(F).
- C. Before providing services to a birth parent, the adoption agency shall advise the birth parent of OLR's responsibility for licensing and monitoring an adoption agency, and the public's

right to register a complaint about an adoption agency as prescribed in R21-9-235.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-231. Adoption Fees; Reasonableness

- A. An adoption agency shall not charge a client more than a reasonable fee for services.
- B. An adoption agency shall establish, maintain, and follow a written policy on the fees it charges a client for adoption services. The fee policy shall include all of the adoption agency's practices and procedures regarding fees, including the following:
 - 1. A schedule of fees the adoption agency charges for each specific service the adoption agency offers, and the time in the adoption process when the client is required to pay the fee, broken down, at a minimum, as follows:
 - a. Preregistration and registration fees,
 - b. Application and orientation fees,
 - c. Certification application fee,
 - d. Certification investigation,
 - e. Certification report,
 - f. Certification renewal fees,
 - g. Placement services,
 - h. Placement investigation and report,
 - i. Foreign adoption services,
 - j. Post-placement services,
 - k. Fees incurred when a child has special needs, and
 - l. Twins or sibling placements;
 - 2. An explanation of any practice the adoption agency may have for assessing fees based on pooled or averaged costs;
 - 3. An explanation of the circumstances or conditions that would cause the adoption agency to reduce, waive, suspend, or refund a fee, which circumstances may include:
 - a. Adjustment made for the well-being of an adoptive child, and
 - b. Adjustments made to accommodate an adoptive parent's limited ability to pay;
 - 4. An explanation of the circumstances that would cause the adoption agency to increase its fees; and
 - 5. The procedures the adoption agency follows to collect its fees.
- C. An adoption agency shall advise prospective and existing clients of its fee policy and shall make a copy of the policy available to clients upon request.
- D. An adoption agency shall not:
 - 1. Condition a client's eligibility for, or receipt of, adoption services on the client's donation or agreement to donate money, goods, services, or other things of value, other than the regular scheduled adoption fees, to the adoption agency or to an adoption agency affiliate;
 - 2. Obstruct or withhold finalization of a placement or adoption solely for nonpayment of fees;
 - 3. Charge a client for any fee, which the adoption agency has not listed in the fee schedule, included in its fee policy, and disclosed to the client in the client's fee agreement letter;
 - 4. Charge a prospective adoptive parent advance fees contrary to R21-5-403(D); or
 - 5. Charge a prospective adoptive parent for a service not rendered.
- E. OLR may audit, or designate a certified public accountant to audit, an adoption agency's fee structure.

- F. The adoption agency shall provide OLR and the adoption agency's current adult clients with a copy of any changes made to the adoption agency's fee policy, no less than 14 days prior to the effective date of the change.
- G. An adoption agency shall refund to a client any fees the client paid for services the adoption agency failed to perform. Against any such refund, the adoption agency may offset any amount due from the client for services the adoption agency has performed and for which the client agreed to pay but has not paid.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-232. Adoption Fee Agreement

- A. Before providing services to an adoptive parent, the adoption agency shall enter into a written fee agreement with the adoptive parent. Both the adoptive parent and an authorized representative of the adoption agency shall sign and date the agreement. The adoption agency shall retain the original agreement in the adoptive parent's file and provide a copy to the adoptive parent.
- B. The fee agreement shall include the following terms:
 - 1. A description of all services the adoption agency will provide to the adoptive parent and the fee for each service; the agreement shall specify how much of the fee is being allocated to cover medical expenses, including the cost of prenatal care and delivery;
 - 2. A general description of any adoption services the adoption agency is not providing but that are required to finalize the adoption, with an estimate of the costs of such services;
 - 3. The terms of payment, including payment due dates and amounts; and
 - 4. A statement advising the client of the client's right to receive a copy of the adoption agency's fee policy.
- C. An adoption agency shall not charge a fee, other than a certification application fee, or enter into an adoption fee agreement until after the potential client has received the orientation described in R21-5-403.
- D. When an adoption agency charges adoptive parents for birth parent counseling, the adoption agency will monitor birth parent attendance at scheduled counseling at least monthly. When a birth parent does not schedule counseling services or misses scheduled counseling services for a month, the adoption agency shall refund to the adoptive parents the portion of the fee covering the remainder of the counseling services.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-233. Monitoring: Inspections and Interviews; Compliance Audit

- A. OLR shall monitor the ongoing operations of each adoption agency.
- B. Monitoring activities may include the following:
 - 1. At least one announced and one unannounced onsite inspection of each adoption agency during the licensing year;
 - 2. Interviews of adoption agency personnel and clients;
 - 3. A review of the adoption agency's books, records, and sample client files; and
 - 4. A compliance audit of the adoption agency, as described in subsection (C).
- C. Upon receipt of a complaint against an adoption agency or in response to observed deficiencies, OLR may conduct a com-

pliance audit of the adoption agency to assess the adoption agency's compliance with applicable adoption licensing and adoption services statutes and rules.

- D.** An adoption agency shall facilitate OLR's monitoring functions or compliance audit by:
1. Making the adoption agency's books, files, records, manuals, premises, and facilities available to OLR staff for inspection;
 2. Allowing OLR to interview adoption agency staff; and
 3. Enabling OLR to conduct interviews with adoption agency clients.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-234. Complaints; Investigations

- A.** Any person may register a complaint about an adoption agency with OLR. OLR shall ask persons making oral complaints to put the complaint in writing.
- B.** Upon receipt of a complaint, or in response to deficiencies observed by Department staff, OLR shall investigate the allegations of the complaint or the deficiencies.
- C.** OLR's investigation may include:
1. Interviews with the complaining party, adoption agency staff, including volunteers and interns, and adoption agency clients;
 2. Inspections of adoption agency records, files, or other documents related to the issues raised in the complaint; and
 3. Any other activities necessary to determine the truth of the allegations.
- D.** Upon completion of its investigation, OLR shall:
1. Find that the complaint is not valid and close the investigation;
 2. Find that the complaint is valid and take appropriate disciplinary action against the adoption agency, as described in this Chapter; or
 3. Find that the complaint cannot be validated or refuted based on the available evidence.
- E.** OLR shall maintain a file on all complaints against an adoption agency and shall make information on validated complaints available to the general public, upon request, and to the extent permitted by confidentiality laws.
- F.** A complainant's identity is confidential unless OLR takes a licensing action based on the testimony of the complainant.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-5-235. Noncompliance Status: Corrective Action Plan

- A.** OLR shall place an adoption agency in noncompliance status when an OLR representative observes or receives and validates a complaint in an area that does not endanger the health, safety, or well-being of a client.
- B.** OLR shall mail the adoption agency written notice of the noncompliance status, the reason for that status, and recommendations for changes the adoption agency can make to cure the identified problem.
- C.** No later than 14 days following the date of the noncompliance notice, the adoption agency shall provide OLR with a written plan showing how the adoption agency shall correct the problem that resulted in the noncompliance status, with an estimated time-frame in that the adoption agency shall implement the corrective action. OLR may extend the 14-day time-frame when the adoption agency has demonstrated a good faith effort to address and resolve the identified problem.

- D.** Imposition of a corrective action plan is not appealable.
- E.** Failure to comply with the requirements of a corrective action plan may result in an adverse licensing action.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-236. Suspension

- A.** OLR may suspend an adoption agency's license for violations of the statutes or rules governing adoptions, or for any activity that may threaten the health, safety, or welfare of any adoption agency client, including the following:
1. When the Department receives a report of abuse or neglect alleged to have been committed by adoption agency staff, including a volunteer of intern against a child, and the adoption agency fails to take protective measures pending an investigative finding;
 2. Conduct that causes disruption of a placement or adoption;
 3. When an adoption agency permits an employee who has failed to comply with fingerprinting requirements or who has been denied fingerprint clearance to continue providing services to children;
 4. When an adoption agency refuses to cooperate with OLR requests for information that OLR requires for determining compliance with the statutes and rules governing provision of adoption services;
 5. When an adoption agency refuses to provide OLR with information OLR has requested during the course of a complaint investigation; or
 6. When an adoption agency fails to correct a problem that resulted in imposition of noncompliance status, within the time provided in the adoption agency's corrective action plan.
- B.** OLR shall mail the adoption agency written notice of the suspension, the reason for the suspension, and an explanation of the adoption agency's right to appeal the suspension.
- C.** Except as otherwise provided in subsection (D), an adoption agency may continue to place adoptable children who become available for placement and to finalize adoptions of placed children and adoptees during a period of suspension, but the adoption agency shall not recruit, accept, or register any new birth or adoptive parent.
- D.** When the Department finds that the physical or emotional health or safety of a client is in imminent danger, the Department may take immediate action to eliminate the danger. For the purpose of this subsection,
1. A situation involving imminent danger are those situations identified in A.R.S. § 8-821(B) that would justify removal of a child;
 2. Immediate action may include:
 - a. Removal of a child,
 - b. Transfer of a client to another adoption agency, or
 - c. Other protective action designed to eliminate the danger or risk of harm.
- E.** If the adoption agency does not correct the situation that led to suspension of its license, OLR shall initiate license revocation proceedings against the adoption agency.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-237. Revocation

- A.** OLR may revoke a license for any of the following reasons:
1. When the adoption agency refuses or fails to comply with licensing requirements, Arizona or federal laws, local

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- codes or ordinances, or violates a statute or rule governing provision of adoption services;
2. When the adoption agency commits any activity that may threaten the health, safety, or welfare of any adoption agency client, including, but not limited to the circumstances justifying license suspension, as prescribed in R21-9-236;
 3. When the adoption agency commits fraud or intentional misrepresentation in obtaining or renewing its license;
 4. When the adoption agency commits fraud or intentional misrepresentation in dealing with its clients;
 5. When the adoption agency has obtained a birth parent's relinquishment and consent to adoption through duress, coercion, extortion, or intimidation;
 6. When the adoption agency knowingly fails to advise an adoptive parent that the adoptive child has been abused while in the adoption agency's care or control; or
 7. When the adoption agency violates its agreement with a client for provision of services.
- B.** OLR shall mail the adoption agency written notice of the revocation, the reason for the revocation, and an explanation of the adoption agency's right to appeal the revocation.
- C.** A revocation is effective:
1. Twenty-one days after receipt of the notice or letter advising the person of the revocation; or
 2. In cases where the adoption agency appeals the revocation the revocation is effective under R21-1-307.
- D.** An adoption agency that has had its license revoked shall not perform adoption services after the effective date of the revocation and shall surrender its license to OLR.
- E.** An adoption agency that has had its license revoked shall cooperate with OLR to transfer all its clients to another adoption agency.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-238. Adverse Action: Procedures

- A.** When OLR takes adverse action against adoption agency applicant or adoption agency, OLR shall give the affected party written notice of such adverse action by first-class or registered mail.
- B.** For the purpose of this Section, the following are adverse actions:

1. Denial of an initial or renewal license, and
 2. Suspension or revocation of a license.
- C.** The adverse action notice shall specify:
1. The action taken,
 2. All reasons supporting such action,
 3. The procedures by which the adoption agency may contest the action taken, and
 4. Where the adoption agency may file an appeal.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-239. Appeals

- A.** An adoption agency applicant or adoption agency may appeal an adverse action other than imposition of a corrective action plan due to noncompliance status, by filing a written notice of appeal with OLR no later than 20 days after receipt of the notice or letter advising the adoption agency of the adverse action.
- B.** OLR shall conduct an appeal from an adverse action as prescribed in A.A.C. Title 21, Chapter 1, Article 3.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).

R21-9-240. International Adoptions

- A.** An adoption agency shall not accept a foreign child for adoptive placement in the United States unless the government of the foreign child's country of origin authorized the placement.
- B.** The adoption agency shall provide OLR with evidence of its authority from or agreements with a foreign country or placing organization (such as Hague Accreditation). If the evidence of authority is not written in English, the adoption agency shall provide an English language translation of the documentation by an independent translation service.
- C.** The adoption agency shall advise the adoptive parents of the need to have the child naturalized in the United States.
- D.** The adoption agency shall provide adoptive parents with information about the child's culture of origin.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3524, effective January 24, 2016 (Supp. 15-4).