

A.R.S. T. 36, Ch. 7.1, Art. 4, Refs & Annos

A.R.S. § 36-897

§ 36-897. Definitions

In this article, unless the context otherwise requires:

1. "Child care group home" means a residential facility in which child care is regularly provided for compensation for periods of less than twenty-four hours per day for not less than five children but no more than ten children through the age of twelve years.

2. "Department" means the department of health services.

3. "Provider" means the certificate holder or a person the certificate holder designates in writing who, pursuant to applicable statutes and rules, is to be responsible for direct daily supervision, operation and maintenance of the child care group home.

4. "Substantial compliance" means that the nature or number of violations revealed by any type of inspection or investigation of an applicant for certification as a child care group home or a certified child care group home does not pose a direct risk to the life, health or safety of children.

A.R.S. § 36-897.01

§ 36-897.01. Certification; application; fees; rules; fingerprinting; renewal; exemption from rule making

Effective: July 29, 2010

A. A child care group home shall be certified by the department. An application for a certificate shall be made on a written or electronic form prescribed by the department and shall contain all information required by the department.

B. If a child care group home is within one-fourth mile of agriculture land, the application shall include the names and addresses of the owners and lessees of any agricultural land within one-fourth mile of the facility. Within ten days after receipt of an application for a certificate, the department shall notify the owners and lessees of agricultural land as listed on the application. The department shall deny a certificate that affects agricultural land regulated pursuant to § 3-365, except that the owner of the agricultural land may agree to comply with the buffer zone requirements of § 3-365. If the owner agrees in writing to comply with the buffer zone requirements and records the agreement in the office of the county recorder as a restrictive covenant running with the title to the land, the department may issue a certificate to the child care group home to be located within the affected buffer zone. The agreement may include any stipulations regarding the child care group home, including conditions for future expansion of the facility and changes in the operational status of the facility that will result in a breach of the agreement. This subsection applies to the renewal of a certificate for a child care group home located in the same location if the child care group home certificate was not previously issued under this subsection.

C. The director, by rule, may establish and collect fees for child care group homes and a late filing fee. Beginning January 1, 2010, ninety per cent of the fees collected pursuant to this section shall be deposited, pursuant to §§ 35-146 and 35-147, in the health services licensing fund established by § 36-414 and ten per cent of the fees collected pursuant to this section shall be deposited, pursuant to §§ 35-146 and 35-147, in the state general fund.

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D. Pursuant to available funding the department shall collect annual fees.

E. Beginning January 1, 2010, subject to the availability of monies, the department may establish a discount program for certification fees paid by child care group homes, including a public health discount program.

F. The department shall issue an initial certificate if the department determines that the applicant and the applicant's child care group home are in substantial compliance with the requirements of this article and department rules and the facility agrees to carry out a plan acceptable to the director to eliminate any deficiencies.

G. A certificate is valid unless it is revoked or suspended or the licensee does not pay the licensure fee and may be renewed by submitting the certification fee as prescribed by the department pursuant to subsection C of this section.

H. In order to ensure that the equipment and services of a child care group home and the good character of an applicant are conducive to the welfare of children, the department by rule shall establish the criteria for granting, denying, suspending and revoking a certificate.

I. The director shall adopt rules and prescribe forms as may be necessary for the proper administration and enforcement of this article.

J. The certificate shall be conspicuously posted in the child care group home for viewing by parents and the public.

K. Current department inspection reports shall be kept at the child care group home and shall be made available to parents on request.

L. A certificate is not transferable and is valid only for the location occupied at the time it is issued.

M. An application for an initial certificate shall include:

1. The form that is required pursuant to § 36-897.03, subsection B and that is completed by the applicant.

2. A copy of a valid fingerprint clearance card issued to the applicant pursuant to § 41-1758.07.

N. The department of health services shall notify the department of public safety if the department of health services receives credible evidence that a person who possesses a valid fingerprint clearance card either:

1. Is arrested for or charged with an offense listed in § 41-1758.07, subsection B.

2. Falsified information on any form required by § 36-897.03.

O. Certificate holders may pay fees by installment payments based on procedures established by the department.

P. The department shall review its actual costs to administer this article at least once every two years. If the

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department determines that its administrative costs are lower than the fees it has collected pursuant to this section, it shall adjust fees.

Q. If the department lowers fees, the department may refund or credit fees to licensees.

R. Fee reductions are exempt from the rule making requirements of title 41, chapter 6.¹

A.R.S. § 36-897.02

§ 36-897.02. Standards of care; monitoring

A. The department by rule shall establish standards of care for child care group homes. These rules shall include minimum programmatic, personnel, supervision of children, training, physical environment and financial stability standards.

Enabling Statute

B. At least two adults shall be present in the child care group home when six to ten children are cared for in the home.

C. For purposes of certification of the child care group home, the provider's own children shall not be counted.

D. The total number of children present in a child care group home at any given time for whom compensation is received shall not exceed ten.

E. The total number of children present in a child care group home at any given time, including children related to the provider, shall not exceed fifteen.

F. The department shall monitor the operation of a child care group home at least two times each year to ensure that the child care group home is meeting department standards of care.

A.R.S. § 36-897.03

§ 36-897.03. Child care group homes; child care personnel; fingerprints; definition

Effective: June 29, 2009

A. Child care personnel, including volunteers, shall submit the form prescribed in subsection B of this section to the employer and shall have valid fingerprint clearance cards issued pursuant to § 41-1758.07 or shall apply for a fingerprint clearance card within seven working days of employment or beginning volunteer work.

B. Applicants, certificate holders and child care personnel shall attest on forms that are provided by the department that:

1. They are not awaiting trial on or have never been convicted of or admitted in open court or pursuant to a plea agreement committing any of the offenses listed in § 41-1758.07, subsection B or C in this state or similar offenses

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in another state or jurisdiction.

2. They are not parents or guardians of a child adjudicated to be a dependent child as defined in § 8-201.

3. They have not been denied a certificate to operate a child care group home or a license to operate a child care facility for the care of children in this state or another state or had a license to operate a child care facility or a certificate to operate a child care group home revoked for reasons that relate to the endangerment of the health and safety of children.

C. The provider shall make documented, good faith efforts to contact previous employers of child care personnel to obtain information or recommendations that may be relevant to an individual's fitness to work in a certified child care group home.

D. The director may adopt rules prescribing the exclusion from child care group homes of individuals whose presence may be detrimental to the welfare of children.

E. The forms required by subsection B of this section are confidential.

F. A person who is awaiting trial on or who has been convicted of or who has admitted in open court or pursuant to a plea agreement to committing a criminal offense listed in § 41-1758.07, subsection B or subsection B, paragraph 2 or 3 of this section is prohibited from being employed in any capacity in a child care group home.

G. A person who is awaiting trial on or who has been convicted of or who has admitted in open court or pursuant to a plea agreement to committing a criminal offense listed in § 41-1758.07, subsection C shall not work in a child care group home without direct visual supervision unless the person has applied for and received the required fingerprint clearance card pursuant to § 41-1758 and is registered as child care personnel. A person who is subject to this subsection shall not be employed in any capacity in a child care group home if that person is denied the required fingerprint clearance card.

H. The employer shall notify the department of public safety if the employer receives credible evidence that any child care personnel either:

1. Is arrested for or charged with an offense listed in § 41-1758.07, subsection B.

2. Falsified information on the form required by subsection B of this section.

I. For the purposes of this section, "child care personnel" means all employees of and persons who are eighteen years of age or older and who reside in a child care group home that is certified by the department.

A.R.S. § 36-897.04

§ 36-897.04. Exemptions

A. This article does not apply to the care given to children by or in:

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1. The homes of their own parents.

2. A religious institution conducting a nursery in conjunction with its religious services.

3. A unit of the public school system.

4. A regularly organized private school engaged in an educational program which may be attended in substitution for public school pursuant to § 15-802.

5. Any facility that provides training only in specific subjects, including dancing, drama, music, self-defense or religion.

6. Any facility that provides only recreational or instructional activity to school age children who may come to and go from that facility at their own volition.

B. If regularly organized private schools exempt under subsection A, paragraph 4 of this section provide child care beyond public school hours or for children who are not regularly enrolled in kindergarten programs or grades one through twelve, that portion of the school providing this care shall be considered a child care group home and is subject to this article.

A.R.S. § 36-897.05

§ 36-897.05. Inspection of child care group homes

A. The department or designated local health departments or its agents may at any time visit, during hours of operation, and inspect a child care group home in order to determine whether it is certified and is being conducted in compliance with applicable law, this article and rules adopted pursuant to this article.

B. The department shall visit each child care group home as often as necessary to assure continued compliance with this article and the rules adopted pursuant to this article. At least one unannounced visit shall be made annually.

A.R.S. § 36-897.06

§ 36-897.06. Civil penalty; collection

A. The director may impose a civil penalty on a person who violates this article or rules adopted pursuant to this article in an amount of not more than one hundred dollars for each violation. Each day that a violation occurs constitutes a separate violation. The director may issue a notice that includes the proposed amount of the civil penalty assessment. A person may appeal the assessment by requesting an administrative hearing. If a person requests a hearing to appeal an assessment, the director shall not take further action to enforce and collect the assessment until the hearing process is complete. The director shall impose a civil penalty only for those days on which the violation has been documented by the department.

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B. In determining the civil penalty pursuant to subsection A, the department shall consider the following:

1. Repeated violations of statutes or rules.
2. Patterns of noncompliance.
3. Types of violations.
4. Severity of violations.
5. Potential for and occurrences of actual harm.
6. Threats to health and safety.
7. Number of children affected by the violations.
8. Number of violations.
9. Size of the facility.
10. Length of time during which violations have been occurring.

C. If a civil penalty imposed pursuant to subsection A of this section is not paid, the attorney general or a county attorney shall file an action to collect the civil penalty in a justice court or the superior court in the county in which the violation occurred.

D. Civil penalties collected pursuant to subsection A of this section shall be deposited, pursuant to §§ 35-146 and 35-147, in the state general fund.

E. The department shall develop an instrument that documents compliance and noncompliance of child care group homes according to the criteria prescribed in its rules governing child care group home certification. Blank copies of the instrument, which shall be in standardized form, shall be made available to the public.

A.R.S. § 36-897.07

§ 36-897.07. Training program

The director shall establish a training program to provide training for child care group homes and users of child care group home services, technical assistance materials for child care group homes and information to enhance consumer awareness.

A.R.S. § 36-897.08

§ 36-897.08. Intermediate sanctions; notification of compliance; hearing

A. If the director has reasonable cause to believe that a child care group home is in violation of this article or a rule adopted pursuant to this article and that the health or safety of the children is endangered, on written notice to the child care group home the director may impose one or more of the following intermediate sanctions until the child care group home is in substantial compliance:

1. Immediately restrict admissions to the child care group home.
2. Terminate specific services that the child care group home may offer.
3. Reduce the child care group home's capacity.

B. A child care group home sanctioned pursuant to this section shall notify the department in writing when it is in substantial compliance. On receipt of notification the department shall conduct an inspection. If the department determines that the child care group home is in substantial compliance the director shall immediately rescind the sanctions. If the department determines that the child care group home is not in substantial compliance the sanctions remain in effect. The child care group home may then notify the department of substantial compliance not sooner than fourteen days after the date of that inspection. If the department determines on the return inspection that the child care group home is still not in substantial compliance the sanctions remain in effect. Thereafter, a child care group home may notify the department of substantial compliance not sooner than thirty days after the date of the last inspection. A child care group home shall make all notifications of substantial compliance by certified mail. The department shall conduct all inspections required pursuant to this subsection within fourteen days after receipt of notification of substantial compliance. If the department does not conduct an inspection within this time period, the sanctions have no further effect.

C. On written request by a person who has been sanctioned pursuant to this section the director or the director's designee shall conduct a hearing to review the sanctions. A request for a hearing shall be made by certified mail within ten days after receipt of notice of the sanctions. The office of administrative hearings shall conduct an administrative hearing within seven business days after the notice of appeal has been filed with the office of administrative hearings.

D. A hearing conducted pursuant to this section shall comply with the requirements of title 41, chapter 6, article 10.¹

A.R.S. § 36-897.09

§ 36-897.09. Operating without a certificate; notice; hearing; violation; classification

A. If the department has reasonable cause to believe that a person is operating a child care group home without a certificate, it shall notify that person to cease operation within ten days of receiving the notice. The department shall give notice either by certified mail or by personal service. The notice shall state that the person may make a written request for a hearing before the director or the director's designee pursuant to title 41, chapter 6, article 10.¹

B. If a person fails to cease operation, the department may request that the county attorney of the county in which

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the home is located enforce this article. The department may also notify the attorney general who shall immediately seek a restraining order and an injunction against the home.

C. A person who continues to operate a child care group home without certification ten days after receiving notice pursuant to this section is guilty of a class 1 misdemeanor.

A.R.S. § 36-897.10

§ 36-897.10. Pending action or sale; effect on licensure

Effective: April 22, 2008

A. The department shall not act on an application for certification of a currently certified child care group home while any enforcement or court action related to child care group home certification is pending against that group home's current certificate holder.

B. The director may continue to pursue any court, administrative or enforcement action against the certificate holder even if the group home is in the process of being sold or transferred to a new owner.

C. The department shall not approve a change in group home ownership unless it determines that there has been a transfer of legal and equitable interests, control and authority in the group home so that persons other than the transferring certificate holder, that certificate holder's agent or other parties exercising authority or supervision over the group home's daily operations or staff are responsible for and have control over the group home.

A.R.S. § 36-897.11

§ 36-897.11. Injunctions; definition

A. If the department believes that a child care group home is operating under conditions that may cause serious harm to children, the department shall notify the attorney general or the county attorney of the county in which the child care group home is located who shall immediately seek a restraining order and injunction against the home.

B. For the purposes of this section, "serious harm" means a substantial physical injury.

A.R.S. § 36-897.12

§ 36-897.12. Inspection of records

A. Records maintained by the department for child care group homes are available to the public for review and copying.

B. Personally identifiable information that relates to a child, parent or guardian is confidential. The department shall disclose this information only as follows:

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1. Pursuant to a court order.
 2. Pursuant to a written consent signed by the parent or guardian.
 3. To a law enforcement officer who requires it for official purposes.
 4. To an official of a governmental agency who requires it for official purposes.
- C.** The department shall enter into the child care group home's case file, contiguous to the form containing the reported violations, those documents that verify correction of reported violations.