

A.R.S. T. 36, Ch. 7.1, Art. 1, Refs & Annos

A.R.S. § 36-881

§ 36-881. Definitions

In this article, unless the context otherwise requires:

1. “Child” means any person through the age of fourteen years. Child also means a person who is under eighteen years of age if the child has a developmental disability as defined in § 36-551 or has at least one of the disabilities listed in § 15-761, paragraph 2 and requires special education as defined in § 15-761.

2. “Child care” means the care, supervision and guidance of a child or children, unaccompanied by a parent, guardian or custodian, on a regular basis, for periods of less than twenty-four hours per day, in a place other than the child’s or the children’s own home or homes.

3. “Child care facility” means any facility in which child care is regularly provided for compensation for five or more children not related to the proprietor.

4. “Controlling person” means a person who:

(a) Through ownership, has the power to vote at least ten per cent of the outstanding voting securities.

(b) If the applicant or licensee is a partnership, is the general partner or a limited partner who holds at least ten per cent of the voting rights of the partnership.

(c) If the applicant or licensee is a corporation, an association or a limited liability company, is the president, the chief executive officer, the incorporator, an agent or any person who owns or controls at least ten per cent of the voting securities.

(d) Holds a beneficial interest in ten per cent or more of the liabilities of the applicant or the licensee.

5. “Department” means the department of health services.

6. “Director” means the director of the department of health services.

7. “Person” means an individual, partnership, corporation, limited liability company, association, day nursery, nursery school, day camp, kindergarten, child care agency, school governing board, charter school or child care center that operates a child care facility.

8. “Substantial compliance” means that the nature or number of violations revealed by any type of inspection or investigation of an applicant for licensure or a licensed child care facility does not pose a direct risk to the life, health or safety of children.

A.R.S. § 36-882

§ 36-882. License; posting; transfer prohibited; fees; provisional license; renewal; exemption from rule making

Effective: July 29, 2010

A. A child care facility shall not receive any child for care, supervision or training unless the facility is licensed by the department of health services.

B. An application for a license shall be made on a written or electronic form prescribed by the department and shall include:

1. Information required by the department for the proper administration of this chapter and rules adopted pursuant to this chapter.

2. The name and business or residential address of each controlling person.

3. An affirmation by the applicant that no controlling person has 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 has 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. An application for an initial license shall include:

1. The form that is required pursuant to § 36-883.02, subsection C 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.

3. If the applicant's facility is located within one-fourth mile of any agricultural land, the names and addresses of the owners and lessees of the agricultural land and a copy of the agreement required pursuant to subsection D of this section.

D. The department shall deny any license 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 license the child care facility to be located within the affected buffer zone. The agreement may include any stipulations regarding the child care facility, 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 shall not apply to the issuance or renewal of a license for a child care facility located in the same location for which a child care facility license was previously issued.

E. On receipt of an application for an initial license, the department shall inspect the applicant's physical space, activities and standards of care. If the department determines that the applicant and the applicant's facility are in substantial compliance with this chapter and rules adopted pursuant to this chapter and the applicant agrees to carry

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out a plan acceptable to the department to eliminate any deficiencies, the department shall issue an initial license to the applicant.

F. Beginning January 1, 2010, subject to the availability of monies, the department may establish a discount program for licensing fees paid by child care facilities, including a public health discount.

G. The director, by rule, may establish and collect fees for child care facilities and a fee for late filing of applications. 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.

H. Pursuant to available funding, the department shall collect annual fees.

I. A license is valid from the date of issuance unless it is subsequently revoked or suspended or the licensee does not pay the licensure fee and shall specify the following:

1. The name of the applicant.
2. The exact address where the applicant will locate the facility.
3. The maximum number and age limitations of children that shall be cared for at any one time.
4. The classification of services that the facility is licensed to provide.

J. The department may issue a provisional license, not to exceed six months, to an applicant or a licensed child care facility if:

1. The facility changes director.
2. The department determines that an applicant for an initial license or a licensed child care facility is not in substantial compliance with this chapter and rules adopted pursuant to this chapter and the immediate interests of children, families and the general public are best served if the child care facility or the applicant is given an opportunity to correct deficiencies.

K. A provisional license shall state the reason for the provisional status.

L. On the expiration of a provisional license, the department shall issue a regular license if the department determines that the licensee and the child care facility are in substantial compliance with this chapter and rules adopted pursuant to this chapter and the applicant agrees to carry out a plan acceptable to the department to eliminate any deficiencies.

M. The licensee shall notify the department in writing within ten days of any change in the child care facility's director.

Current through legislation effective April 30, 2014 of the Second Regular Session of the Fifty-first Legislature

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N. The license is not transferable from person to person and is valid only for the quarters occupied at the time of issuance.

O. The license shall be conspicuously posted in the child care facility.

P. The licensee shall conspicuously post a schedule of fees charged for services and the established policy for a refund of fees for services not rendered.

Q. The licensee shall keep current department inspection reports at the child care facility and shall make them available to parents on request. The licensee shall conspicuously post a notice that identifies the location where these inspection reports are available for review.

R. The department of health services shall notify the department of public safety if the department of health services receives credible evidence that a licensee 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 § 36-883.02.

S. Licensees may pay licensure fees by installment payments based on procedures established by the department.

T. The department shall review its actual costs to administer this article at least once every two years. If the department determines that its administrative costs are lower than the fees it has collected pursuant to this section, it shall adjust fees.

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

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

A.R.S. § 36-883

§ 36-883. Standards of care; rules; classifications

Effective: September 13, 2013

A. The director of the department of health services shall prescribe reasonable rules regarding the health, safety and well-being of the children to be cared for in a child care facility. These rules shall include standards for the following:

Enabling Statute

1. Adequate physical facilities for the care of children such as building construction, fire protection, sanitation, sleeping facilities, isolation facilities, toilet facilities, heating, ventilation, indoor and outdoor activity areas and, if provided by the facility, transportation safely to and from the premises.

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2. Adequate staffing per number and age groups of children by persons qualified by education or experience to meet their respective responsibilities in the care of children.

3. Activities, toys and equipment to enhance the development of each child.

4. Nutritious and well-balanced food.

5. Encouragement of parental participation.

6. Exclusion of any person from the facility whose presence may be detrimental to the welfare of children.

B. The department shall adopt rules pursuant to title 41, chapter 6' and § 36-115.

C. Any rule that relates to educational activities, physical examination, medical treatment or immunization shall include appropriate exemptions for children whose parents object on the ground that it conflicts with the tenets and practices of a recognized church or religious denomination of which the parent or child is an adherent or member.

D. The department of health services shall conduct a comprehensive review of its rules at least once every two years. Before conducting this review, the department shall consult with agencies and organizations that are knowledgeable about the provision of child care facilities to children including:

1. The department of economic security.

2. The department of education.

3. The state fire marshal.

4. The league of Arizona cities and towns.

5. Citizen groups.

6. Licensed child care facility representatives.

E. The department shall designate appropriate classifications and establish corresponding standards pertaining to the type of care offered. These classifications shall include:

1. Facilities offering infant care.

2. Facilities offering specific educational programs.

3. Facilities offering evening and nighttime care.

F. Rules for the operation of child care facilities shall be stated in a way that clearly states the purpose of each rule.

A.R.S. § 36-883.01

§ 36-883.01. Statement of services

Each child care facility shall annually furnish to the department, and make available to parents on request, an explicit and up-to-date written statement of the services it offers.

A.R.S. § 36-883.02

§ 36-883.02. Child care personnel; fingerprints; exemptions; definition

Effective: June 29, 2009

A. Except as provided in subsection B of this section, child care personnel, including volunteers, shall submit the form prescribed in subsection C 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. Exempt from the fingerprinting requirements of subsection A of this section are parents, including foster parents and guardians, who are not employees of the child care facility and who participate in activities with their children under the supervision of and in the presence of child care personnel.

C. Applicants, licensees 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 in this state or similar offenses 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 or had revoked a certificate to operate a child care group home or a license to operate a child care facility in this or any other state or that they have not been denied or had revoked a certification to work in a child care facility or child care group home.

D. Employers of child care personnel 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 for employment in a child care facility.

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

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F. A child care facility shall not allow a person to be employed or volunteer in the facility in any capacity if the person has been denied a fingerprint clearance card pursuant to § 41-1758.07 or has not received an interim approval from the board of fingerprinting pursuant to § 41-619.55, subsection I.

G. 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 C of this section.

H. For the purposes of this section, “child care personnel” means any employee or volunteer working at a child care facility.

A.R.S. § 36-883.03

§ 36-883.03. Employer-subsidized child care; immunity from liability

A. An employer that subsidizes child care on a nondiscriminatory basis to its employees through a child care facility licensed pursuant to this article or through a person or facility exempt from licensure pursuant to this article but screened pursuant to § 41-1964 or 46-321 is not liable for damages as a result of an act or omission by the child care facility, person or exempt facility unless the employer is guilty of gross negligence in recommending the child care facility, person or facility or unless the employer is acting as the owner or has an ownership interest in or is an operator of the child care facility or exempt facility.

B. For purposes of this section, an employer is deemed to be subsidizing an employee’s child care costs if the employer pays, either directly or indirectly, at least twenty-five per cent of the cost of the child care service rendered to the employee by the child care facility, person or exempt facility described in subsection A of this section.

A.R.S. § 36-883.04

§ 36-883.04. Standards of care; rules; enforcement

The director shall prescribe reasonable rules and standards regarding the health, safety and well-being of children cared for in any public school child care program. These rules shall be comparable to the rules and standards prescribed pursuant to § 36-883. The director shall also prescribe rules regarding the enforcement of the standards of care including penalties for noncompliance with these standards. These enforcement and penalty provisions shall be comparable to those existing for private child care facilities.

Enabling Statute

A.R.S. § 36-884

§ 36-884. Exemptions

Effective: August 2, 2012

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

1. The homes of parents or blood relatives.

2. A religious institution conducting a nursery in conjunction with its religious services or conducting parent-supervised occasional drop-in care.

3. A unit of the public school system, including specialized professional services provided by school districts for the sole purpose of meeting mandated requirements to address the physical and mental impairments prescribed in § 15-771. If a public school provides child care other than during the school's regular hours or for children who are not regularly enrolled in kindergarten programs or grades one through twelve, that portion of the school that provides child care is subject to standards of care prescribed pursuant to § 36-883.04.

4. A regularly organized private school engaged in an educational program that may be attended in substitution for public school pursuant to § 15-802. If the school provides child care beyond regular 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 such care shall be considered a child care facility and is subject to this article.

5. Any facility that provides training only in specific subjects, including dancing, drama, music, self-defense or religion and tutoring provided by public schools solely to improve school performance.

6. Any facility that provides only recreational or instructional activities to school age children who may enter into and depart from the facility at their own volition. The facility may require the children to document their entrance into and departure from the facility. This documentation does not affect the exemption under this paragraph. The facility shall post a notice stating it is not a licensed child care facility under § 36-882.

7. Any of the Arizona state schools for the deaf and the blind.

8. A facility that provides only educational instruction for children who are at least three and not older than six years of age if all the following are true:

(a) The facility instructs only in the core subjects of math, reading and science.

(b) The facility does not accept state-subsidized tuition for the children.

(c) A child is present at the facility for not more than two and one-quarter hours a day and not more than three days a week.

(d) The instruction is not provided in place of care ordinarily provided by a parent or guardian.

(e) The facility posts a notice that the facility is not licensed under this article.

(f) The facility requires fingerprint cards of all personnel pursuant to § 36-883.02.

9. A facility that operates a day camp that provides recreational programs to children if all of the following are true:

(a) The day camp is accredited by a nationally recognized accrediting organization for day camps as approved by the department.

(b) The day camp operates for less than twenty-four hours a day and less than ten weeks each calendar year.

(c) The day camp posts a notice at the facility and on its website that it is not licensed under the laws of this state as a child care facility.

(d) The day camp provides programs only to children who are at least five years of age.

(e) The day camp requires fingerprint cards of all personnel pursuant to § 36-883.02.

A.R.S. § 36-885

§ 36-885. Inspection of child care facilities

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 facility to determine if it complies with this article and rules adopted under this article.

B. The department shall visit each child care facility as often as necessary to assure continued compliance with this article and department rules. The department shall make at least one unannounced visit annually.

A.R.S. § 36-886

§ 36-886. Operation without a license; classification

A. If it appears that any person is maintaining or operating a child care facility without a license, the department shall notify the facility's operator either by mail, by certified mail with return receipt requested or by delivery in person. The person affected by the notice shall, within ten days from its receipt, cease and desist operation or show proof of having a valid license. The person may, within ten days, request in writing a hearing before the director.

B. On application of the department, a magistrate shall issue a warrant to the department authorizing inspection of a child care facility if there is probable cause to believe that a person is operating the facility without a license.

C. If a person does not comply with this section the department shall notify the county attorney of the county in which the child care facility is being operated of the violation and request that criminal prosecution be commenced against the violator. The department may request the attorney general to apply for injunctive relief.

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D. Any person who continues to maintain or operate a child care facility without a license ten days after receipt of notice from the department is guilty of a class 1 misdemeanor.

A.R.S. § 36-886.01

§ 36-886.01. Injunctions

If the department believes that a child care facility is operating under conditions that present possibilities of serious harm to children, the department shall notify the county attorney or the attorney general who shall immediately seek a restraining order and injunction against the facility.

A.R.S. § 36-887

§ 36-887. Procedure for inspection of records

A. Records maintained by the department for child care facilities 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:

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 facility's case file, contiguous to the form containing the reported violation, those documents that verify correction of reported violations.

A.R.S. § 36-888

§ 36-888. Denial, revocation or suspension of license

A. The department may deny, suspend or revoke a license for a violation of this article or department rules. At least thirty days before the department denies, revokes or suspends a license it shall mail the applicant or licensee a notice of that person's right to a hearing. The department shall issue this notice by registered mail with return receipt requested. The notice shall state the hearing date and the facts constituting the reasons for the department's action and shall cite the specific statute or rule that the person is not conforming to.

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B. If the person does not respond to the written notice the department, at the expiration of the time fixed in the notice, shall take the action prescribed in the notice. If the person, within the period fixed in the notice, conforms the application or the operation of the child care facility to the applicable statute or rule, the department may grant the license or withdraw the notice of suspension or revocation.

A.R.S. § 36-889

§ 36-889. Licensees; applicants; residency; controlling persons; requirements

A. Each licensee, other than a corporation, a limited liability company, an association or a partnership, shall be a citizen of the United States who is a resident of this state, or a legal resident alien who is a resident of this state. A corporation, association or limited liability company shall be a domestic entity or a foreign entity that is qualified to do business in this state. A partnership shall have at least one partner who is a citizen of the United States and who is a resident of this state, or who is a legal resident alien and who is a resident of this state.

B. The department shall not issue or renew a license unless a list of each of the applicant's or licensee's controlling persons is on file with the department and no controlling person has 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 other state or has 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 applicant or licensee shall notify the department within thirty days after the election of any new officer or director or of any change in the controlling persons and shall provide the department the name and business or residential address of each controlling person and an affirmation by the applicant that no controlling person has 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 has 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.

D. Each applicant or licensee shall designate an agent who is authorized to receive communications from the department, including legal service of process, and to file and sign documents for the applicant or licensee. The designated agent shall be all of the following:

1. A controlling person.
2. A citizen of the United States or a legal resident alien.
3. A resident of this state.

A.R.S. § 36-890

§ 36-890. Decisions

All decisions rendered by the director, pursuant to the applicable law and regulations, shall be in writing and filed of record in the office of the department. Notice of such decisions shall be given to the affected person or licensee. If no appeal is taken by any such person or licensee within the time provided by law, the decision of the director shall

be final and conclusive.

A.R.S. § 36-891

§ 36-891. Civil penalty; inspection of centers; training program

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. 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.

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 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. Unless a license is revoked or suspended, the director shall place the license of a child care facility subject to a civil penalty pursuant to subsection A on provisional license status for a period of time not to exceed six months in

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addition to other penalties imposed pursuant to this article.

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

F. The department shall develop an instrument that documents compliance and noncompliance of child care facilities according to the criteria prescribed in its rules governing child care facility licensure. Blank copies of the instrument, which shall be in standardized form, shall be made available to the public.

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

A.R.S. § 36-891.01

§ 36-891.01. Intermediate sanctions; notification of compliance; hearing

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

1. Immediate restrictions on new admissions to the child care facility.
2. Termination of specific services that the facility may offer.
3. Reduction of the facility's capacity.

B. A child care facility 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 facility is in substantial compliance the director shall immediately rescind the sanctions. If the department determines that the facility is not in substantial compliance the sanctions remain in effect. The facility 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 facility is still not in substantial compliance the sanctions remain in effect. Thereafter, a facility may notify the department of substantial compliance not sooner than thirty days after the date of the last inspection. A facility 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. A person who has been ordered by the director to restrict admission, reduce capacity or terminate specific services may request a hearing to review the director's action. The person shall make this request in writing within ten days after the person receives notice of the director's action. 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.

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

A.R.S. § 36-892

§ 36-892. Violation; classification

Any person violating the provisions of the applicable law, or regulations, is guilty of a class 2 misdemeanor unless another classification is specifically prescribed in this article.

A.R.S. § 36-893

§ 36-893. Legal action or sale; effect on licensure

Effective: April 22, 2008

A. The department shall not act on an application for licensure of a currently licensed child care facility while any enforcement or court action related to child care facility licensure is pending against that facility's current licensee.

B. The director may continue to pursue any court, administrative or enforcement action against the licensee even though the facility is in the process of being sold or transferred to a new owner.

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

A.R.S. § 36-894

§ 36-894. Medical marijuana; child care facilities; prohibition

Effective: August 2, 2012

A person, including a cardholder as defined in § 36-2801, may not lawfully possess or use marijuana in any child care facility in this state.