ALABAMA DEPARTMENT OF HUMAN RESOURCES SOCIAL SERVICES DIVISION ADMINISTRATIVE CODE

CHAPTER 660-5-41
PROTECTIVE SERVICES FOR ADULTS

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660-5-41-.01 Purpose Of Protective Services.

(1) The purpose of protective services is to provide services to elderly and/or disabled adults unable to protect their own interests or are harmed or threatened with harm through the action or inaction by another individual because of physical or mental impairment or lack of knowledge, or are unable to manage their own resources in order to carry out the activities of daily living or to protect or remove themselves from neglect, harmful, or hazardous situations resulting in physical or mental injury; neglect or maltreatment; failure to receive adequate food, shelter, or clothing; deprivation of entitlement due them; or wasting of their resources.

(2) The specific purposes for providing or securing protective services are:

(a) To prevent injury to self and/or others;

(b) To see that emergency care is provided to meet acute physical, mental, or other needs that the individual cannot himself arrange;

(c) To protect the individual's rights if legal action is needed;

(d) To prevent neglect, abuse and exploitation of the individual; and

(e) To protect the individual's financial resources.

Author: Felicia M. Brooks

Statutory Authority: Code of Ala. 1975, §§38-2-6, 38-9-1 through -11; Title XX of the Social Security Act, 42 U.S.C. 1397. **History:** Effective June 29, 1983. Emergency amendment effective September 23, 1983. Permanent amendment effective December 9, 1983. Succedent emergency amendment effective June 13, 1991. Succedent permanent amendment effective September 10, 1991. Succedent emergency amendment effective December 17, 1992. Succedent permanent amendment effective March 11, 1993. Succedent emergency effective July 16, 1993. **Amended:** Filed: September 3, 1993; effective October 8, 1993. **Amended:** Filed October 5, 1994; Succedent permanent amendment effective November 9, 1994. **Amended:** Filed July 10, 2007; effective August 14, 2007. **Amended:** Published May 28, 2021; effective July 12, 2021. **Amended:** Published September 30, 2026; effective November 14, 2026.

660-5-41-.02 Definitions.

The following definitions shall apply to this rule:

(a) "Adult in Need of Protective Services" is a person 18 years of age or older whose behavior indicates that he is mentally incapable of adequately caring for himself and his interests without serious consequences to himself or others, or who because of physical or mental impairment, is unable to protect himself from abuse, neglect or exploitation by others, and who has no guardian or relatives or other appropriate person able, willing and available to assume the kind and degree of protection and supervision required under the circumstances.

(b) "Caregiver" is an individual who has the responsibility for the care of the elderly or handicapped person as a result of family relationship or who has assumed the responsibility for the care of the person voluntarily, by contract or as a result of the ties of friendship.

(c) "Other Like Incapacities" are conditions incurred as the result of accident or mental or physical illness, producing a condition which substantially impairs an individual from adequately providing for his own care or protecting his own interests or protecting himself from physical or mental injury or abuse.

(d) “Neurodegenerative Disease” is relating to or being a progressive loss of neurologic function.

(e) "Abuse" is the infliction of physical pain, injury, or the willful deprivation by a caretaker or other person of services necessary to maintain mental and physical health.

(f) "Emotional Abuse" is the willful or reckless infliction of emotional or mental anguish or the use of a physical or chemical restraint, medication or isolation as punishment or as a substitute for treatment or care of any protected person.

(g) "Neglect" is the failure of a caretaker to provide food, shelter, clothing, medical services, and health care for the person unable to care for himself; or the failure of the person to provide these basic needs for himself when the failure is the result of the person's mental or physical inability.

(h) "Exploit" is the expenditure, diminution or use of the property, assets or resources of a person subject to protection under the provisions of Code of Ala. 1975, §§38-9-1 through -11, without the express voluntary consent of that person or his legally authorized representative.

(i) "Protected Person" is any person over 18 years of age subject to protection under the provisions of Code of Ala. 1975, §§38-9-2 through 22, or any person including but not limited to persons with neurodegenerative disease, persons with intellectual disabilities, and developmental disabilities or any person over 18 years of age that is mentally or physically incapable of adequately caring for himself or herself and his or her interests without serious consequences to himself, herself or others.

(j) "Protective Services" are those services whose objective is to protect an incapacitated person from himself and from others.

(k) "Department" is the Department of Human Resources of the State of Alabama.

(l) "Court" is the circuit court.

(m) "Physical Injury" is the impairment of physical condition or substantial pain.

(n) "Serious Physical Injury" is a physical injury which creates a risk of death, or which causes serious and protracted disfigurement, protracted impairment of health or protracted loss or the impairment of the function of any bodily organ.

(o) "Person" is any natural human being.

(p) "Intentionally." A person acts intentionally with respect to a result or to conduct described by a statute defining an offense, when his purpose is to cause that result or to engage in that conduct.

(q) "Recklessly." A person acts recklessly with respect to a result or to a circumstance described by a statute defining an offense when he is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard conduct that a reasonable person would observe in the situation. A person who creates a risk but is unaware thereof solely by reason of voluntary intoxication, as defined in subdivision (e)(2) of §13A-3-2, acts recklessly with respect thereto. (Acts 1977, No. 780, p. 1340, §2; Acts 1989, No. 89-825, §1.)

Author: Audrey Peterson
Statutory Authority: Code of Ala. 1975, §§38-2-6, 38-9-1 through -11.
History: Effective June 28, 1983. Succedent permanent amendment effective September 7, 1990. Succedent emergency amendment effective June 13, 1991. Succedent permanent amendment effective September 10, 1991. Succedent permanent emergency amendment effective July 21, 1994. Succedent permanent amendment: Filed September 6, 1994; effective October 11, 1994. **Amended:** Filed December 10, 2018; effective January 24, 2019.

660-5-41-.03 Reporting.

(1) The Department of Human Resources receives reports from any person, including but not limited to, any social worker, law enforcement officer, physician and other practitioners of the healing arts serving adults who have reasons to believe an individual has been subjected to abuse, neglect, or exploitation.

(2) The Department of Human Resources requires social workers in its employment to report cases of suspected abuse, neglect, or exploitation.

Author: Patricia Brooks
Statutory Authority: Code of Ala. 1975, §§38-2-6, 38-9-1 through -11.
History: Effective June 28, 1983. Succedent emergency amendment effective December 17, 1992. Succedent permanent amendment effective March 11, 1993.

660-5-41-.04 Investigations.

(1) All complaints and reports (including anonymous ones) about adults who, the reporter has reason to believe, have been subjected to abuse, neglect, or exploitation and who have no one able, willing, and available to assume the necessary care and protection shall be investigated by the County Department of Human Resources; or when a report is received from a mandatory reporter,

the investigation is completed by the Department of Human Resources or the chief of police or county sheriff, whichever receives the report, and the investigation shall be conducted within seven days after receipt of the oral report. Reports of investigations made by law enforcement officials must be sent to the County Department within twenty-four hours and are to become a part of the client's case record. Such reports by law enforcement or the County Department must include a minimum of:

(a) Name, age, and address of the person being reported on;

(b) Nature and extent of injury of such person; and

(c) Any other facts or circumstances known to the reporter which may aid in the determination of appropriate action.

(2) The County Department of Human Resources will investigate all reports within the following time frame:

(a) Investigate, immediately, all reports of suspected abuse, neglect, or exploitation when the allegations indicate the adult may be in immediate danger.

(b) Investigate, within seven days of receipt all reports of suspected abuse, neglect, or exploitation.

(3) The purpose of the investigation is to establish facts that will be useful in determining whether the adult reported on has been abused, neglected, or exploited and is in need of protective services. The focus of the investigation is on the client and his welfare. The assistance of law enforcement officials may be requested when necessary to complete the investigation. When there is no one else able, willing, and available to provide the necessary care and protection, the Department of Human Resources will intervene.

Author: Patricia Brooks

Statutory Authority: Code of Ala. 1975, §§38-2-6, 38-9-1 through -11.

History: Effective June 28, 1983. Emergency amendment effective September 23, 1983. Permanent amendment effective December 9, 1983. Succedent permanent amendment effective January 9, 1990. Succedent permanent amendment effective September 7, 1990. Succedent emergency amendment effective December 17, 1992. Succedent permanent amendment effective March 11, 1993. Succedent emergency amendment effective July 21, 1994. Succedent permanent amendment: Filed September 6, 1994; effective October 11, 1994.

660-5-41-.05 Services.

(1) Protective services may include:

(a) Case management

1. assessing the need for services

2. case planning

3. arranging services such as medical care or other community services

4. reassessment/follow-up

5. monitoring on an ongoing basis the delivery of and need for services

(b) Investigating the situation;

(c) Provide diagnostic and evaluative services to clients and to others on their behalf;

(d) Transportation necessary for the worker to provide the service;

(e) Arrange appropriate alternative living arrangements;

(f) Arrange for appointment of guardians of the person;

(g) Arrange for appointment of conservator of the estate;

(h) Arrange for protective placement or providing advocacy to assure receipt of rights and entitlements due them;

(i) Emergency shelter care limited to 28 days per fiscal year.

(j) Receiving and filing adult protective service reports;

(k) Making required reports to the court; (l Information and Referral;

(m) Legal representation for the DHR; and

(n) Arrange for mental health counseling.

(2) Limitations in the provision of services:

(a) Fees or payments will not be made by the DHR for room, board or care except for emergency shelter care which is limited to 28 days per fiscal year. This is true even though the DHR is obligated to cooperate with the court in securing resources for the client when the court has ordered an evaluation of the client or that protective placement be provided.

(b) Other services cannot be provided until eligibility criteria for those specific services has been established.

(c) Payment for care in a court-ordered protective setting is to be made from client's income and/or resources, and also for any part of a court-ordered evaluation that is not available without cost.

(d) If the client does not have income or resources to pay for services and the services needed are not available through the DHR, assistance will be provided in making application for and/or assisting in establishing eligibility for benefits.

Author: Kay Pilgreen
Statutory Authority: Code of Ala. 1975, §§38-2-6, 38-9-1 through -11.
History: Emergency adoption effective September 23, 1983. Permanent amendment effective December 9, 1983. Succedent permanent amendment effective September 7, 1990. Succedent emergency amendment effective December 17, 1992. Succedent permanent amendment effective March 11, 1993. **Amended:** Filed February 18, 1999; effective March 25, 1999.

660-5-41-.06 Eligibility.

Any adult 18 years of age or over who is at risk of abuse, neglect and exploitation or at risk of institutionalization and meets the definition of an adult in need of protective services given in Rule 660-5-41-.02 is eligible for protective services for adults and may be eligible for other services if the specific requirements for the services are met.

Author: Kay Pilgreen
Statutory Authority: Code of Ala. 1975, §§38-2-6, 38-9-1 through -11.
History: Emergency adoption effective September 23, 1983. Permanent amendment effective December 9, 1983. **Amended:** Filed February 18, 1999; effective March 25, 1999.

660-5-41-.07 Alabama Elder And Adult In Need Of Protective Services Abuse Registry.

I. INTRODUCTION

Under Section 38-9G-2, Code of Alabama 1975, the Alabama Department of Human Resources is responsible for establishing and maintaining a statewide registry known as the Alabama Elderly and Adult in Need of Protective Services Abuse Registry (hereinafter, "Registry") for adult abuse, neglect, and exploitation reports made pursuant to §38-9-8, Code of Alabama 1975, as well as criminal convictions and protection from abuse orders. The

purpose of the Registry is to protect vulnerable adults from abuse, neglect, and exploitation.

The Registry shall contain the name of any individual for whom any of the following are true:

(1) The individual has been convicted of the crime of elder abuse and neglect in the first degree pursuant to Section 13A-6-192, Code of Alabama 1975.

(2) The individual has been convicted of the crime of elder abuse and neglect in the second degree pursuant to Section 13A-6-193, Code of Alabama 1975.

(3) The individual has been convicted of the crime of elder abuse and neglect in the third degree pursuant to Section 13A-6-194, Code of Alabama 1975.

(4) The individual has been convicted of the crime of financial exploitation of an elderly person in the first degree pursuant to Section 13A-6-195, Code of Alabama 1975.

(5) The individual has been convicted of the crime of financial exploitation of an elderly person in the second degree pursuant to Section 13A-6-196, Code of Alabama 1975.

(6) The individual has been convicted of the crime of financial exploitation of an elderly person in the third degree pursuant to Section 13A-6-197, Code of Alabama 1975.

(7) The individual has been convicted of any act of elder abuse as defined in Section 38-9F-3, Code of Alabama 1975.

(8) An elder abuse protection order has been issued against the individual pursuant to section 38-9F-4, Code of Alabama 1975.

(9) A protection from abuse order has been issued against the individual pursuant to Chapter 5 of Title 30, Code of Alabama 1975, for the protection of an elderly person or an adult in need of protective services.

(10) The individual has been convicted of an act of abuse, neglect, or exploitation as described in Section 38-9-7, Code of Alabama 1975.

(11) The individual has been found by the Department of Human Resources to have committed an act of abuse, elder abuse, emotional abuse, exploitation, financial exploitation, intimidation, neglect, sexual abuse, or undue influence against an elderly person or an adult in need of protective services.

II. Definitions for the purposes of this Central Registry

The following terms have the following meanings:

(1) ABUSE. The same term as defined in Section 38-9-2, Code of Alabama 1975, as amended, "the infliction of physical pain, injury, or the willful deprivation by a caregiver or other person of services necessary to maintain mental and physical health."

(2) ADULT FOSTER HOME. The terms "foster family home" and "foster home" are used interchangeably to describe the settings of foster care for adults. Foster care for adults is intended to provide the security of a supportive family atmosphere and encouragement toward social interaction. It can be both rehabilitative and preventive.

(3) ADULT IN NEED OF PROTECTIVE SERVICES. The same term as defined in Section 38-9-2, Code of Alabama 1975, as amended, "a person 18 years of age or older whose behavior indicates that he or she us mentally incapable of adequately caring for himself or herself and his or her interests without serious consequences to himself or herself or others; or who because of physical or mental impairment, is unable to protect himself or herself from abuse, neglect or exploitation, sexual abuse, or emotional abuse by others, and who has no guardian or relative or other appropriate person able, willing, and available to assume the kind and degree of protective supervision required under the circumstances."

(4) DEPARTMENT. The Alabama Department of Human Resources. To the extent other entities are referenced in this Section, the following will be used: Alabama Department of Public Health ("ADPH"); Alabama Department of Mental Health ("ADMH"); Administrative Office of Courts ("the AOC").

(5) ELDER ABUSE. The same term as defined in Section 38-9F-3(2), Code of Alabama 1975, as amended, "the commission of any of the following acts or the intent to commit any of the following acts against an elderly person:

a. Abuse, as defined in Section 38-9-2, Code of Alabama 1975.

b. Arson, as defined in Sections 13A-7-40 to 13A-7-43, inclusive, Code of Alabama 1975.

c. Assault, as defined in Sections 13A-6-20 to 13A-6-22, inclusive, Code of Alabama 1975.

d. Criminal coercion, as defined in Section 13A-6-25, Code of Alabama 1975.

e. Criminal trespass as defined in Sections 13A-7-2 to 13A-7-4.1, inclusive, Code of Alabama 1975.

f. Emotional abuse, as defined in Sections 13A-6-191, Code of Alabama 1975.

g. Financial abuse, as defined in Sections 13A-6-191 and 8-6-171, Code of Alabama 1975.

h. Harassment, as defined in Section 13A-11-8, Code of Alabama 1975.

i. Kidnapping, as defined in Sections 13A-6-43 and 13A-6-44, Code of Alabama 1975.

j. Menacing, as defined in Sections 13A-6-23, Code of Alabama 1975.

k. Reckless endangerment, as defined in Sections 13A-6-24, Code of Alabama 1975.

l. Sexual abuse, as defined as any of the acts in Sections 13A-6-60 to 13A-6-68, Code of Alabama 1975.

m. Stalking, as defined in Sections 13A-6-90 to 13A-6-91.1, inclusive, Code of Alabama 1975.

n. Theft, as defined in Sections 13A-8-2 to 13A-8-5, inclusive, Code of Alabama 1975.

o. Unlawful imprisonment, as defined in Sections 13A-6-41 and 13A-6-42, Code of Alabama 1975."

(6) ELDERLY PERSON. An individual 60 years of age or older.

(7) EMOTIONAL ABUSE. The intentional or reckless infliction of emotional or mental anguish, or the use of a physical or chemical restraint, medication, or isolation as punishment or as a substitute for treatment or care of any elderly person or adult in need of protective services.

(8) EMPLOYEE. An individual who is either:

a. Hired directly or through a contract by a service provider who has duties that involve, or may involve, one-on-one contact with a patient, resident, or client.

b. A volunteer of a service provider who has duties that involve, or may involve, one-on-one contact with a patient, resident, or client.

c. Since the legislation does not indicate it was intended to apply retroactively, this definition applies to those hired or volunteering on or after January 1, 2023.

(9) EXPLOITATION. The same term as defined in Section 38-9-2, Code of Alabama 1975, as amended, "the expenditure, diminution, or use of the property, assets, or resources of a protected person without the express voluntary consent of that person or his or her legally authorized representative or the admission of or provision of care to a protected person who needs to be in the care of a licensed hospital by an unlicensed hospital after a court order obtained by the State Board of Health has directed closure of the unlicensed hospital."

(10) FINANCIAL EXPLOITATION. Any of the following:

a. The wrongful or unauthorized taking, withholding, appropriation, or use of money, assets, or property of an elderly person or an adult in need of protective services.

b. The use of deception, intimidation, undue influence, force, or threat of force to obtain or exert unauthorized control over an elderly person's money, assets, or property or the money, assets, or property of an adult in need of protective services with the intent to deprive that individual of his or her money, assets, or property.

c. The breach of a fiduciary duty to an elderly person or an adult in need of protective services under a power of attorney or through a conservatorship or guardianship which results in an unauthorized appropriation, sale, or transfer of the individual's money, assets, or property.

(11) INDICATED. This disposition is used when preponderance of the substantial evidence (e.g., eyewitness account, medical report, or professional evaluation) and the professional judgement of the social worker (based on facts gathered during the initial assessment) indicates that abuse, neglect, or exploitation has occurred and that the adult is physically or mentally impaired or aged.

(12) INTIMIDATION. A threat of physical or emotional harm to an elderly person or an adult in need of protective services, or the communication to an elderly person or adult in need of protective services that he or she will

be deprived of food and nutrition, shelter, property, prescribed medication, or medical care or treatment.

(13) NEGLECT. The same term as defined in Section 38-9-2, Code of Alabama 1975, as amended, "the failure of a caregiver to provide food, shelter, clothing, medical services, or health care for the person unable to care for himself or herself; or the failure of the person to provide these basic needs for himself or herself when the failure is the result of the person's mental or physical inability." Lack of supervision may meet the definition of neglect when lack of supervision results in lack of food, shelter, clothing, medical services, or health care.

(14) SERVICE PROVIDER. Any of the following:

a. As defined in Section 38-9G-1(11), Code of Alabama 1975, to include any of the following: (a) Assisted living community centers; (b) Specialty care assisted living communities or centers; (c) Home health agencies; (d) Hospice programs or residential hospice facilities; (e) Hospitals; (f) Long-term care facilities; (g) Skilled nursing facilities; (h) Rehabilitation facilities; (i) Group homes, other residential facilities, and community-based services serving adults in need of protective services, as designed by the rules adopted by the Department, ADMH, and ADPH; and/or (j) Foster homes that serve elderly persons or adults in need of protective services.

b. Adult Day Care Facilities

c. Should a conflict exist between definitions provided by the Department, ADPH, and/or ADMH, the definition used by the regulating, certifying, or licensing agency shall control. If no such agency exists, the Department's definition shall control.

(15) SEXUAL ABUSE. The same term as defined in Section 38-9-2, Code of Alabama 1975, as amended, "any conduct that constitutes a crime under Article 4 of Chapter 6 of Title 13A." Forms of sexual abuse include rape, incest, sodomy, and indecent exposure.

(16) UNDUE INFLUENCE, Domination, coercion, manipulation, or any other act exercised by another individual to the extent that an elderly person or adult in need of protective services is prevented from exercising free judgement and choice.

III. DISCLOSURE OF INFORMATION AND QUERY

The Department shall establish and enforce reasonable rules governing the custody, use, and preservation of the reports and records of abuse, elder abuse, emotional abuse, exploitation, financial exploitation, intimidation, neglect, sexual abuse, or undue influence against an elderly person or an adult in need of protective services. These reports and records and related information or testimony shall be confidential, and shall not be used or disclosed for any purposes other than the following:

(1) For investigation by a law enforcement agency.

(2) For use by a grand jury upon its determination that access to the reports and records is necessary in the conduct of its official business.

(3) For use by a court that finds the information is necessary for the determination of an issue before the court.

(4) For use by any guardian ad litem, guardian, or conservator authorized by a court to act as a representative for an elderly person or adult in need of protective services who is the subject of a report.

(5) For use by a physician who has before him or her an elderly person or an adult in need of protective services whom the physician reasonably suspects may be abused or neglected.

(6) For use by federal, state, or local governmental entities, social service agencies of another state, or any agent of these entities, having a need for the information in order to carry out their responsibilities under law to protect individuals from abuse and neglect.

(7) For public disclosure of the findings or information about the case of abuse or neglect that has resulted in a fatality. Information identifying by name persons other than the victim shall not be disclosed.

(8) For purposes of employment by a service provider.

(A) On or before July 1, 2023, a service provider shall query the Registry via the Department with regard to an individual who is an employee or prospective employee of the provider to confirm whether any of the following are true:

1. The individual has been convicted of a crime as previously stated in Section I.

2. An elder abuse protection order against the individual has been issued pursuant to Section 38-9F-4, Code of Alabama 1975.

3. A protection from abuse order has been issued against the individual pursuant to Chapter 5 of Title 30, Code of Alabama 1975, for the protection of an elderly person or an adult in need of protective services.

4. The Department of Human Resources has made a finding that the individual has committed an act of abuse, elder abuse, emotional abuse, exploitation, financial exploitation, intimidation, neglect, sexual abuse, or undue influence against an elderly person or an adult in need of protective services.

IV. NOTIFICATIONS FROM OTHER AGENCIES

(A) The AOC shall notify the Department of the criminal conviction or protection order concerning an individual under any of the following circumstances:

1. An individual is found guilty of a crime perpetrated against an elderly person or an adult in need of protective services as previously stated in Section I.

2. The court issues an elder abuse protection order against an individual pursuant to Section 38-9F-4, Code of Alabama 1975.

3. The court issues a protection from abuse order against an individual pursuant to Chapter 5 of Title 30, Code of Alabama 1975, for the protection of an elderly person or an adult in need of protective services.

(B) ADPH, ADMH, and all other agencies responsible for investigating reports of abuse, neglect, exploitation, sexual abuse, or emotional abuse under Section 38-9-6, Code of Alabama 1975, shall notify the Department of the outcome of the investigation if the report is determined to have been true or founded.

In addition to documentation required by the Department, notification shall include the individual's last known mailing address and any other information that the agency determines is necessary to adequately identify the individual when inquiry to the Registry is made.

(C) Upon receiving notification as previously stated, the Department, in addition to entering the individual's name and address on the Registry, shall enter information pertaining to the offense or offenses of which the individual was convicted. If an elder abuse protection order against the individual has been issued, or if a protection from abuse order against the individual has been issued for the protection of an elderly person or an adult in need of protective services,

information pertaining to why the order was issued and the age of the victim shall be entered by the Department when known.

(D) If the individual whose information is entered on the Registry was not convicted of a crime but was found by the investigating agency to have otherwise committed acts of abuse, elder abuse, emotional abuse, exploitation, financial exploitation, intimidation, neglect, sexual abuse, or undue influence against an elderly person or an adult in need of protective services, the Department, in addition to entering the individual's name and address on the Registry, shall also enter information pertaining to the offense or offenses the individual was found by the investigating agency to have committed. The Department shall adopt the final dispositional findings of other investigating agencies, provided all requested and applicable due process has been completed.

V. DUE PROCESS

Due process shall be completed prior to an individual's information being placed on the Registry. In submitting the results of their investigations to the Department for placement on the Registry, ADMH and ADPH affirm due process has been completed. Placement on the Registry as to the AOC's submissions shall be determined by the final order of a court of competent jurisdiction.

Where the Department is the investigating agency, due process shall be completed in accordance with Ala. Admin. Code r. 660-5-41-.01. Notice of an indicated finding must be given by personal service or by certified mail to the person responsible for abuse, neglect, and/or exploitation.

VI. EXPUNGEMENT

Once the individual's information is entered on the Registry, it shall remain on the Registry even if the individual fulfills the obligations of any criminal sentencing against the individual. An individual's name may be expunged from the registry for one of three reasons only:

(1) Expungement of a criminal conviction was ordered by a court of competent jurisdiction with adequate notice to all parties. This finding results in expungement of a criminal conviction only.

(2) Other investigating agencies (ADMH or ADPH) have expunged records of investigations conducted by them based on their respective rules or policy.

(3) Should an individual believe the Registry information is inaccurate due to mistaken identity, he

or she may, within thirty days of notification that his or her name appears on the Registry, challenge the inaccurate information contained therein.

(a) This process does not apply to a challenge to factual findings of an investigation or the disposition of an investigation where due process has occurred. The purpose of this process is to provide due process for those who have been identified in error as having committed an act of abuse, neglect, or exploitation of an elderly person or an adult in need of protective services.

(b) If the Registry entry is one that was entered based on a criminal conviction (as reported by the AOC) or the investigation of another investigating agency (ADPH or ADMH), the individual must contact the entity having made the initial finding (ADPH or ADMH) or the AOC as to its submission to the Department. The finding shall only be expunged from the Registry following that entity's determination that it is due to be expunged. Should that entity decline to expunge the entry, appeal should be taken in a manner consistent with that entity's regulations.

(c) For those Registry entries based on the Department's investigation, the request must be made in writing and submitted by certified mail to: APS Registry Division, Alabama Department of Human Resources, P.O. Box 304000, Montgomery, Alabama 36130. The request must include, at a minimum, a detailed description of the challenge as well as copies of all relevant official documents.

(d) The Commissioner of the Department shall designate an agency official to review these challenges. The information submitted will be reviewed by the Commissioner's designees, who will determine whether the individual has been identified in error.

(e) If the individual remains dissatisfied with the decision of the Department, he or she may submit a notice of appeal by certified mail to: Administrative Hearings Division, Alabama Department of Human Resources, P.O. Box 304000, Montgomery, Alabama 36130. Any hearing before an administrative law judge will be conducted in accordance with the regulations of the Department.

(f) Should an individual remain dissatisfied with the ruling of the administrative law judge, he

or she may appeal the ruling to a Circuit Court of competent jurisdiction in accordance with § 41-22-20, Code of Alabama 1975. Notice of this appeal may be given by certified mail to: Administrative Hearings Division, Alabama Department of Human Resources, P.O. Box 304000, Montgomery, Alabama 36130.

VII. CLEARANCE OF ADULT PROTECTIVE SERVICES REGISTRY

Adult Abuse, Neglect and Exploitation (AANE) Clearance forms signed by the individual to be cleared must be submitted by mail or e-mail. If submitted by mail, the forms should be mailed to Adult Protective Services Intake Division, Alabama Department of Human Resources, Post Office Box 304000, Montgomery, Alabama 36130-4000. If submitted by e-mail, the forms should be sent to apsregistry@dhr.alabama.gov.

Author: Teressa Momon
Statutory Authority: Sections 38-9-8 and Sections 38-9G-1 through 38-9G-5, Code of Alabama 1975; Title XX of the Social Security Act, 42 U.S. C. A. § 1397.
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660-5-41-.08 Due Process.

(1) Administrative Record Reviews

(a) All persons allegedly responsible for abuse, neglect and exploitation with substantiated (i.e., indicated) Adult Abuse, Neglect or Exploitation dispositions must be given an opportunity to disagree with the Department's findings through an administrative record review if the person allegedly responsible is not initially entitled to an administrative hearing.

(b) The record review is completed to determine if the Adult Abuse, Neglect or Exploitation assessment contains sufficient documentation based on a preponderance of credible evidence to support the "indicated" disposition of adult abuse, neglect or exploitation.

(c) Upon completion of the Adult Abuse, Neglect or Exploitation assessment, adult protective services staff shall provide all persons identified as being responsible for abuse, neglect or exploitation with written notification of their right to an administrative record review if the individual is not initially entitled to an administrative hearing. Each person identified as responsible for abuse, neglect or exploitation must be sent a

separate letter. If the person is a minor (i.e., under age 19), the notification must be sent in care of the minor's parents or legal custodian who may request the review on behalf of the child.

(d) Notification letters may be provided to the person allegedly responsible for abuse/neglect by mail or hand-delivery.

(e) The person allegedly responsible is given ten (10) departmental working days from the receipt of the notification to request an administrative record review. The request must be in writing. If no such request is received in the Department's office by the end of the tenth (10th) working day, the alleged person responsible's opportunity for a record review will be considered waived.

(f) The person allegedly responsible for abuse/neglect is given ten (10) departmental working days from the receipt of the administrative record review notification upholding the "indicated" disposition to request a hearing. That request must be in writing, and if no such request is received in the Department's office within ten (10) working days, the person's opportunity for a hearing is considered to be waived. The "indicated" disposition is then entered into the State Adult Abuse/Neglect Central Registry, and the person's employer, prospective employer, facility administrator, or licensing/certifying agency or group may be notified about the finding of the AANE assessment.

(2) Investigative Hearings

(a) Any person who is approved, licensed, or certified to care for adults; any person who is employed (i.e., professional, non-professional, contract) by, serves as a volunteer for, or is connected with (e.g., student completing an educational practicum, board members) any facility, agency, or home which cares for and controls any adults and the facility is licensed, approved, or certified by the state; operated as a state facility; or is any public, private, or religious facility or agency that may be exempt from licensing procedures must be offered a hearing when they have been identified as the person allegedly responsible for abuse/neglect and exploitation and the preliminary Adult Abuse, Neglect or Exploitation (AANE) disposition is "indicated." These individuals must be offered a hearing even if they were reported to have abused/neglected/exploited their own relatives.

(b) Except where written consent or a release is obtained, written notification of an opportunity for a departmental adult protective services investigative hearing must be given to an alleged

perpetrator before releasing information or reports to: employers or prospective employers, approving agencies, or licensing/ certifying agencies or groups in all in-home care or out-of-home care settings, e.g. nursing homes, assisted living facilities, foster homes, day care centers, group homes, home health care, etc. under the following circumstances:

(i) The alleged perpetrator has contact with elderly and/or disabled or other vulnerable persons as a part of his/her employment or potential employment;

(ii) The adult protective services report involves the alleged perpetrator's relatives or any other adult in any setting; and

(iii) The investigation involves one of the following situations:

(I) The disposition of a pending adult protective services investigation tentatively appears to be “indicated” for the alleged perpetrator; or

(II) The Department determines that a concluded “indicated” adult protective services investigation already filed in the adult protective services departmental files without a hearing being offered to the perpetrator should be shared for the protection of adults or other vulnerable persons, or

(III) In pending or concluded adult protective services investigations, the investigation disposition is “undetermined” or “not indicated” but the investigation indicates information, facts, or activities which might affect the alleged perpetrator's suitability to have regular and substantial contact with elderly and/or disabled or other vulnerable persons in in-home or out-of-home care situations.

I. Where an employer or licensing agency, etc. is aware of an investigation and requests information, the employer may be told verbally or in writing that the investigation is “not indicated” or undetermined. Additional information may be disclosed with a court order or in compliance with the hearing procedure.

(c) The alleged perpetrator is given ten (10) departmental working days from the receipt of the notification to request a hearing. That request must be in writing. If no such request is received in the Department's office by the end of the tenth (10th) working day, the alleged perpetrator’s opportunity for a hearing will be considered waived, and the employer, prospective employer,

facility administrator, or licensing/certifying agencies or groups will be notified of the findings of the investigation.

1. The victim, a family member, sponsor or someone acting responsibly for the victim, may be notified of the findings of the investigation under the conditions cited above.

(d) If the Department determines that an adult is in imminent danger of any abuse, neglect or exploitation any person in a position to discover, prevent or protect the adult from abuse, neglect or exploitation may be informed of the information in a pending or concluded investigation and the alleged perpetrator may be offered a hearing subsequent to the dissemination of this information.

(e) An adult protective services hearing is an internal investigatory hearing that is fact finding in nature and designed to elicit the facts in an atmosphere that allows the alleged perpetrator to contest the evidence presented against him/her. The following hearing procedures shall apply:

(i) Except as indicated below, the hearing procedures outlined in Chapter 660-1-5 shall apply to adult protective services investigative hearings.

(ii) The State Department of Human Resources shall conduct a hearing to determine by a preponderance of credible evidence that the adult has been abused, neglected or exploited. Credible evidence means that the available facts, when viewed in light of surrounding circumstances, would cause a reasonable person to believe that the alleged perpetrator was responsible for the abuse/neglect/exploitation. This decision does not depend solely on whether a court of law has determined that abuse, neglect, or exploitation has occurred. However, if the courts find cause that abuse, neglect or exploitation has occurred, this evidence will automatically justify a determination of “indicated.”

(iii) The Department bears the burden of persuasion at the hearing.

(iv) In the case of “indicated” reports, the function of the hearing officer in a pending investigation is to make: 1) a determination of finding regarding the facts of the case, and 2) a determination of whether the report is “indicated” according to the investigative guidelines and procedures outlined in the Adult Services Manual and the Department of Human Resources Administrative Code.

(v) In all other cases, the function of the hearing officer in a pending or concluded investigation is: 1) to make a determination of finding regarding the facts of the case according to the investigative guidelines and procedures outlined in the Adult Services Manual and the Department of Human Resources Administrative Code, and 2) to make a determination of whether the facts are reasonably related to whether the alleged perpetrator(s) should be allowed to have regular and substantial contact with elderly and/or disabled or other vulnerable persons.

(vi) The hearing will not strictly follow the rules of evidence as followed by the circuit courts of the State.

(vii) The evidence will be received at the discretion of the hearing officer if it is a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

(viii) Relevant and material evidence, including hearsay evidence, and visual drawings, and testimony about the use of anatomically correct dolls, is admissible at the hearing.

(ix) The victim or a witness may testify at the hearing without prior qualification.

(x) The hearing officer shall determine the weight and credibility to be given to the testimony of all witnesses.

(xi) Videotaped testimony of a victim or witness may be allowed.

(xii) Leading questions may be allowed of a victim or witness.

(xiii) All witnesses shall be allowed to testify without regard to any incompetency. The weight and credibility to be given to their testimony shall be determined by the hearing officer.

(xiv) The hearing shall not be open to the public. However, an employer or licensing/certification representative may be present as a non-participant with the consent of the Department and the alleged perpetrator.

(xv) The rules of discovery as followed by the courts of this State do not apply to the hearing. The alleged perpetrator has the following rights of access to information after a written request:

(I) To be provided a short and plain written statement of the matters asserted which will be presented at the hearing. The request must be made prior to the date set for the hearing to be timely.

(II) To review and copy at cost any written or recorded statement made by the alleged perpetrator to Department personnel in the course of the adult protective services investigation. The request must be made prior to the date set for the hearing to be timely.

(III) To review and copy at cost, before or during the hearing, the written material and other evidence in possession of the Department which will be placed into evidence at the hearing.

(IV) To an in camera (i.e., private) inspection by the hearing officer or an order issued to the Department by the hearing officer to review relevant Department adult protective services record(s) to determine if there is any material exculpatory evidence (i.e., evidence tending to clear or exonerate) in those records not available to the alleged perpetrator through other sources which must be released as necessary to the constitutional fairness of the hearing. Such a request must be made at least five (5) working days prior to the date set for the hearing to be timely.

(V) To review and copy at cost all non-confidential Department policy material (e.g., adult services manual materials, Administrative Letters).

(VI) To review and copy at cost all documents in the official hearing file maintained by the hearing officer.

(xvi) The hearing may be postponed or continued from time to time as necessary to ascertain all the facts or in order to provide a full and adequate opportunity for all the parties to present their case.

(xvii) If the Department's findings are upheld by the hearing decision, the Department may send a copy of the final decision letter to the appropriate employer, prospective employer, facility administrator, or licensing/certifying agencies or groups or may inform the victim, a family member/sponsor or someone who acts responsibly for the victim.

(f) Adult protective services investigative hearings do not apply to adult protective services investigations involving military installations. Adult protective services investigative procedures and disclosure of information involving military installations are governed by military regulations and working agreements with military authorities.
Author: Felicia M. Brooks
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