

APA-4
Revised 1/2018

CERTIFICATION OF EMERGENCY RULES
FILED WITH LEGISLATIVE SERVICES AGENCY
OTHNI LATHRAM, DIRECTOR

Pursuant to Code of Alabama 1975, §§38-9-8

I certify that the attached emergency (amendment, new rule, new chapter, repeal or adoption by reference) is a correct copy as promulgated and adopted on the 19th day of December, 2022.

AGENCY NAME: Department of Human Resources

RULE NO. AND TITLE: 660-5-41-.07 Alabama Elder and Adult in Need of Protective Services Abuse Registry

EFFECTIVE DATE OF RULE: December 19, 2022

EXPIRATION DATE (If less than 120 days: Emergency rule will expire upon permanent rule becoming effective.)

NATURE OF EMERGENCY: Emergency action is required to establish a registry for individuals convicted of certain crimes or found to have committed certain acts of abuse against certain individuals; to require certain care providers to query the registry for employees and prospective employees; to require the Department of Human Resources to adopt rules; to establish criminal penalties.

STATUTORY AUTHORITY: Ala. Code §§ 38-9G-2; 38-9G-3; 38-9G-4, 41-22-23 (1975)

SUBJECT OF RULE TO BE ADOPTED ON PERMANENT BASIS YES NO

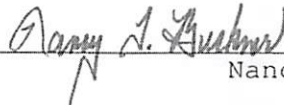
NAME, ADDRESS, AND TELEPHONE NUMBER OF PERSON TO CONTACT FOR COPY OF RULE:

Sandra Guerrero, AP Secretary
State Department of Human Resources
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REC'D & FILED

DEC 19 2022

LEGISLATIVE SVC AGENCY


Nancy T. Buckner
Commissioner

FILING DATE
(For LSA Use Only)

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-.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 is 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.
- (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) 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.

History: **Emergency Rule Filed December 19, 2022.**

**ALABAMA DEPARTMENT OF HUMAN RESOURCES
ALABAMA ELDER AND ADULT IN NEED OF PROTECTIVE SERVICES ABUSE REGISTRY CLEARANCE**

PRINT OR TYPE in black or blue ink.

Agency/Organization Name:

Agency/Organization Email:

Phone #:

Agency/Organization Mailing Street Address:

City:

State:

Zip Code:

Check All That Apply: Direct work with Vulnerable Adults DHR

Service Provider: (check box below)

Assisted Living Community/Center Specialty Case Assisted Living Community/Center

Home Health Agency Hospice Program or Residential Hospital Long Term Care Facility

Skilled Nursing Facility Rehabilitation Facility Adult Foster Homes Other

PLEASE PRINT

Requestor's Name Last:

First:

Middle:

Requestor Signature _____ Date _____

Witness Signature _____ Date _____

The person whose name and identifying information, printed or typed below, will provide unsupervised care and/or work with vulnerable adults. This person's specific job/role is or will be: _____

PLEASE PRINT

Name: Last:

First:

Middle:

Sex: Male Female Race:

DOB:

Last 4 digits of SSN#

Current Mailing Street Address:

City:

State:

Zip:

To be completed by person being cleared

I authorize the Alabama Department of Human Resources (Department) to release information it maintains regarding any Alabama Adult Abuse Neglect and/or Exploitation investigation(s), Department of Mental Health investigation(s), Department of Public Health investigation(s), criminal convictions related to certain convictions and/or Protection from Abuse Orders about me to the above-named person/agency/organization. I hereby waive any right to any review or hearing to which I may otherwise be entitled. I further release the Department, its officers, and employees from any and all claims arising out of or in any way connected to the release or dissemination of any information concerning me. I understand information being reviewed may have been generated by agencies other than DHR. I understand the purpose of the review is to assist the Department in preventing Abuse, Neglect and/or Exploitation of vulnerable adults.

Signature: _____

Date: _____

Signature of Witness: _____

Date: _____

To be completed by DHR

A search of the Alabama Elder and Abuse in Need of Protective Services Abuse Registry has been completed with the information provided to determine if the person identified above has been named as being responsible for Adult Abuse, Neglect and/or Exploitation, has criminal convictions and/or an order for Protection from Abuse. The Department releases only that information which is necessary to discover or prevent Adult Abuse, Neglect and/or Exploitation. The information being provided is accurate as of the date listed and is based on information maintained by DHR and submitted by collaborating agencies.

Information located (i.e., indicated, true, founded). Reported by: AOC DMH Pub Health DHR

Charge(s) :

Protection from Abuse Order Physical Abuse Sexual Abuse Emotional Abuse Neglect Exploitation

Other _____ No information located Request Denied

Office of Adult Protective Services :

Date Completed: _____