

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control _____ Department or Agency Alabama Department of Senior Services
Rule No. 70-x-1-.08
Rule Title: Confidentiality and Disclosure of Information
 New x Amend Repeal Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? no

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? yes

Is there another, less restrictive method of regulation available that could adequately protect the public? no

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? no

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? n/a

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? yes

Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? no

Does the proposed rule have an economic impact? no

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Services Agency.

Signature of certifying officer Emily T. Masal

Date July 19, 2018

(DATE FILED)
(STAMP)

(Agency Name)
(Agency Division, if applicable)

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Department of Senior Services

RULE NO. & TITLE: 70-x-1-.08 Confidentiality and Disclosure of Information

INTENDED ACTION: Amendment

SUBSTANCE OF PROPOSED ACTION: This amendment will remove a reference to a previous version of the Older Americans Act and replace it with "as amended."

TIME, PLACE, MANNER OF PRESENTING VIEWS: Written or oral comments may be submitted to the Alabama Department of Senior Services, 201 Monroe Street, Suite 350, PO Box 301851, Montgomery Alabama 36130-1851. Agency business hours are 8:00 AM to 5:00 PM Monday through Friday.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: Written/Oral comments concerning this change must be received by ADSS no later than September 5, 2018.

CONTACT PERSON AT AGENCY: Emily Marsal, General Counsel, Alabama Department of Senior Services, 201 Monroe Street, Suite 350, PO Box 301851, Montgomery, Alabama 36130-1851.

Todd Cotton

(Signature of officer authorized
to promulgate and adopt
rules or his or her deputy)

70-X-1-.08 Confidentiality and Disclosure of Information.

(1) For purposes of this section, authorized representative shall mean someone who has legal authority to act on behalf of an individual. The legal authority must grant authority to make decisions about health care.

(2) All client and applicant information acquired by a service provider, the Department or an area agency shall not be disclosed by the provider, the Department or the area agency in any form that identifies the person without the authorization of the client, applicant, or his or her designated authorized representative. Client and applicant information shall only be used and released for purposes directly related to the administration of Department programs. Use and release of personal identifiable information shall conform to applicable state and federal law and regulations.

(3) An applicant, client, or authorized representative may, upon reasonable notice received in writing and at a reasonable time during normal business hours, review all of the applicant's or client's records maintained by the Department relating to the grant, denial, or provision of services. A Department staff member shall be present during any review. The Department shall make all information in the case record available except:

(a) an applicant, client, or authorized representative may review only his or her own records;

(b) when the Department believes medical, psychological, or other information may be harmful to the individual, the information may not be released to the individual, but shall be provided through his or her authorized representative, a physician, or licensed or certified psychologist; and

(c) information obtained from another organization or agency may be released only under the conditions established by the outside agency, organization, or provider.

(4) All applicants and clients, or their authorized representatives, shall be informed of the confidentiality of records. Release of information must be by written authorization of the client or applicant or authorized representative and must include:

(a) the nature of the information to be released;

(b) designation of the parties to whom the information may be released;

(c) the specific purpose for which the information is sought to be released;

(d) designation of the agency or person authorized to disclose the information; and

(e) dates of initiation and termination of such authorization.

(5) Upon written consent of an individual or an individual's authorized representative, the Department may release information that could otherwise be released to that individual, to the client's designee.

(6) The Department may disclose information pertaining to an applicant, or client without consent of the individual to its employees, agents, and providers who have a need for access to the information.

(7) Except as authorized above, employees of the Department shall not divulge the contents of any records to any person, or testify in court or in an administrative hearing, nor release records without the consent of the individual unless served with an appropriate subpoena or process and ordered to do so by a judge, hearing officer, or other lawful authority.

(8) The Department or area agency shall not require a provider of legal assistance to reveal any information that is protected by attorney-client privilege.

(9) Information concerning any aspect of a complaint or information concerning a client of the long term care ombudsman program, shall be strictly confidential and shall not be disclosed without the valid and duly executed authorization of the client and a court order signed by a judge.

Author: Irene B. Collins, Commissioner

Statutory Authority: 5 U.S.C. 552, Older Americans Act of 1965, as amended (~~P.L. 109-365~~), 45 C.F.R. 1321.51, Code of Ala. 1975, §§38-3-8 to 38-3-9, § 22-5A-6

History: New Rule: Filed June 5, 2009; effective July 10, 2009.
Amended: Filed July 16, 2018.