

TRANSMITTAL SHEET FOR  
NOTICE OF INTENDED ACTION

Control Department of Human Resources  
Rule No. 660-5-41-.02

Rule Title: Definitions  
         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

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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.

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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 *Amy G. Guzman*

Date 10.22.18

(DATE FILED)  
(STAMP)

APA-2

(Department of Human Resources)  
Adult Protective Services Division

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Department of Human Resources

RULE NO. & TITLE: 660-5-41-.02 and Definitions

INTENDED ACTION: To amend rule to certain references in the definition of "protected person."

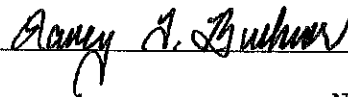
SUBSTANCE OF PROPOSED ACTION: To amend the Administrative Code to revise certain references in the definition of "protected person."

TIME, PLACE, MANNER OF PRESENTING VIEWS: All interested parties may submit data, views, or arguments respecting the proposed amendment by mail or in person through the close of business on December 5, 2018. Persons wishing to submit data, views, or arguments orally should contact the Department's Administrative Procedure Secretary between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, excluding State holidays, at (334) 242-9330, or set up an appointment for such oral/in person presentations.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: December 5, 2018

CONTACT PERSON AT AGENCY:

Gail Grobe, AP Secretary  
State Department of Human Resources  
Gordon Persons Building  
50 Ripley Street, Suite 2122  
Montgomery, Alabama 36130-4000  
(334) 242-9334



Nancy T. Buckner  
Commissioner

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-.02 Definitions.

(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) ~~"Senility" is organic brain damage caused by advanced age or other physical illness in connection therewith to the extent that the person so afflicted is substantially impaired in his ability to adequately provide for his own care.~~

(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, §§38-9-1—2 through ~~14~~ 22, or any person including but not limited to persons ~~who are senile, mentally ill, developmentally disabled, mentally retarded~~ 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 S13A-3-2, acts recklessly with respect thereto. (Acts 1977, No. 780, p. 1340, §2; Acts 1989, No. 89-825, §1.)

**Author:** ~~Patricia Brooks~~ Audrey Peterson

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

**History:** Effective June 28, 1983. Succeedent permanent amendment effective September 7, 1990. Succeedent emergency amendment effective June 13, 1991. Succeedent permanent amendment effective September 10, 1991. Succeedent permanent emergency amendment effective July 21, 1994. Succeedent permanent amendment: Filed September 6, 1994; effective October 11, 1994; Amendment filed October 22, 2018