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 or handicapped 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.

(3) Investigative Hearings

(a) 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.

(b) 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.

(c) 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.

(d) 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.

(e) 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: Patricia 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.

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) "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.

(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 through -11, or any person including but not limited to persons who are senile, mentally ill, developmentally disabled, mentally retarded or any person over 18 years of age that is mentally or physically incapable of adequately caring for himself and his interests without serious consequences to himself 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: Patricia Brooks

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.

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.