

ALABAMA DEPARTMENT OF SENIOR SERVICES
ADMINISTRATIVE CODE

CHAPTER 70-X-1
ORGANIZATION AND ADMINISTRATION

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70-X-1-.01 **Mission And Purpose.** The Alabama Department of Senior Services mission is to promote the independence and dignity of seniors through a comprehensive and coordinated system of quality services. The Department, through advocacy, leadership and program administration, prepares the State of Alabama for the changing demographics of aging.

Author: Irene B. Collins, Commissioner

Statutory Authority: Code of Ala. 1975, §§38-3-1 to 38-3-9.

History: Filed May 20, 1992. **Repealed and New Rule:** Filed June 5, 2009; effective July 10, 2009.

70-X-1-.02 **Definition Of Terms.** To the extent not otherwise defined within these rules and regulations or otherwise by law, the following definitions shall apply:

(a) Board. The Board of Directors for the Alabama Department of Senior Services. The Board serves in an advisory capacity to the Department.

(b) Commissioner. The Commissioner of the Department of Senior Services.

(c) Department. The Alabama Department of Senior Services.

(d) Area Agency. Area Agency on Aging as designated by the Department of Senior Services.

(e) Client. With the exceptions of the legal assistance program and the long-term care ombudsman program, a client is any individual who receives services through the Department or its service provider, contractor, grantee or subgrantee. With the exception of the legal assistance program and the long-term care ombudsman program, a client is any individual who receives services through an Area Agency or its service provider, contractor, grantee or subgrantee. Clients may also be referred to as "consumer" or "participant" for purposes of Department program administration.

(f) Service Provider. An entity that is awarded a subgrant, grant, contract or memorandum of understanding from an area agency to provide services or an entity that is awarded a subgrant, grant, contract or memorandum of understanding from the Department to provide services.

(g) Area Plan. Means the legally binding document submitted by an area agency to the Department of Senior Services in order to receive funding under the Older Americans Act. The Plan details the manner in which the area agency shall furnish a comprehensive and coordinated system of services for older persons throughout the planning and service area. The Plan also outlines the assurances and contractual obligations that the area agency intends to fulfill in exchange for the receipt of funding.

Author: Irene B. Collins, Commissioner

Statutory Authority: Code of Ala. 1975, §41-22-6, Older Americans Act of 1965 (Public Law 109-265).

History: Filed May 20, 1992. **Repealed and New Rule:** Filed June 5, 2009; effective July 10, 2009.

70-X-1-.03 Department Duties Under Federal Aging Programs.

(1) The Department serves as the State Unit on Aging pursuant to the Federal Older Americans Act of 1965, as amended.

(2) The Department is designated in Title 38 Chapter 3, Code of Ala. 1975, as the State Agency to administer all programs made available to Alabama under the Federal Older

Americans Act of 1965, as amended. The Department shall administer these programs in conformity with Title 45, Chapter 13, Code of Federal Regulations and policy guidance issuances from the Administration on Aging of the U.S. Department of Health and Human Services.

(3) Federal regulations governing grants for State and Community Programs on Aging as published in the Federal Register, are applicable to all recipients of grants and contracts funded by the Older Americans Act, including the Department, area agencies and service providers. These Alabama administrative rules are intended to complement and clarify requirements, procedures and Departmental policies applicable to the Older Americans Act Programs and Services. As such, the Department adopts by reference all rules and regulations promulgated by the U.S. Administration on Aging as it pertains to the Older Americans Act.

Author: Irene B. Collins, Commissioner

Statutory Authority: Code of Ala. 1975, §38-3-8 (Act 2008-39), Older Americans Act of 1965, as amended (Public Law 109-365), 45 C.F.R. §1321 Subpart B.

History: Filed May 20, 1992. **Repealed and New Rule:** Filed June 5, 2009; effective July 10, 2009.

70-X-1-.04 Policies And Procedures Manual Content And Format.

(1) The Department shall follow applicable rules and regulations of state agencies for programs administered by the Department (e.g. Home and Community Based Services for the Elderly and Disabled Waiver Program).

Author: Irene B. Collins, Commissioner

Statutory Authority: Code of Ala. 1975, §§38-3-1 to 38-3-9 (Act 2008-39), Older Americans Act of 1965, as amended (Public Law 109-365), 45 C.F.R. §1321, Code of Ala. 1975, §§41-22-1 to 41-22-27.

History: Filed May 20, 1992. **Repealed and New Rule:** Filed June 5, 2009; effective July 10, 2009.

70-X-1-.05 General Powers and Duties of Department.

(1) The Department has authority and responsibility to plan, develop and administer policy on programs for older persons and to provide a visible focal point for advocacy, coordination, priority setting, monitoring and evaluation of programs for older persons within the State. This includes, but is not limited to,

responsibilities and requirements of the Older Americans Act of 1965 as amended.

(2) The Department is responsible for the designation of the Area Agency on Aging for each PSA in accordance with Title III, Section 305 (a) (E) of the Older Americans Act. If the Department initiates an action or proceeding to revoke the designation of an area agency, designate an additional planning and service area, divide the State into different planning and service areas; or otherwise affect the boundaries of the planning and service areas in the state, the affected parties may seek administrative remedies as provided for under these Department rules and the Alabama Administrative Procedure Act.

(3) The Department will develop, promulgate and revise a uniform format for the area agency's Area Plan.

(4) The Department will monitor the administration of each Area Plan.

(5) The Department will coordinate the development of programs and services of Titles III and VII of the Older Americans Act and establish policy and minimum standards.

(6) The Department will coordinate the administration of the SeniorRx Program.

(7) The Department will direct and administer other human services related programs as required, including but not limited to the State Health Insurance Assistance Program, the Senior Medicare Patrol (SMP), and the Senior Employment Program.

(8) The Department will ensure that available U.S. Department of Agriculture food, cash or a combination of food and cash is made available to nutrition service providers funded for the nutrition services program.

(9) The Department will coordinate the development of legal services for older individuals of the state.

(10) The Department shall establish reporting requirements for all programs for the purpose of acquiring programmatic and fiscal information for Federal and State data and analysis.

(11) Agencies, organizations and individuals affected by actions of the Department in carrying out these duties may seek review in accordance with the Alabama Administrative Procedures Act.

Author: Irene B. Collins, Commissioner

Statutory Authority: Code of Ala. 1975, §§38-3-1 to 38-3-9 (Act 2008-39), 41-22-1 to 41-22-27, Older Americans Act of 1965, as amended (Public Law 109-365), 45 C.F.R. §1321.

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

70-X-1-.06 **Requests For Information.** The Commissioner is the designated agent for service of legal process. The Commissioner is the Secretary for purposes of the Alabama Administrative Procedures Act. Requests for information should be made to the Commissioner as follows:

Commissioner, Alabama Department of Senior Services
770 Washington Avenue, Suite 470
Montgomery, Alabama 36104

Author: Irene B. Collins, Commissioner

Statutory Authority: Code of Ala. 1975, §41-22-6.

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

70-X-1-.07 **Public Records.**

(1) "Public record" for the purpose of these rules means all department records which are reasonably necessary to record the business and activities required to be done or carried on by the department that the status and condition of such business and activities can be known to the public. Records which do not constitute "public records" include, but are not necessarily limited to, those received by a public officer in confidence, sensitive personnel records, applicant, client and patient records, complaints against persons deemed licensees of the department, pending criminal and quasi-criminal investigations and records, those matters entitled to statutory or common law privilege, and records the disclosure of which would be detrimental to the best interests of the public.

(2) Requests for inspection or copies, official or unofficial, of specific public records must be made in writing. Requested public records are available for inspection at Department headquarters during the business hours of 8 a.m. until 4 p.m., Monday through Friday. The Commissioner shall approve the availability of the requested records and, if approved, set an effective date that the records are made available for inspection. Inspection of public records shall be made upon such terms and conditions so as not to disrupt the orderly conduct of the department's affairs.

(3) Any person who desires to obtain copies of specific public records may forward a written request to the Commissioner, and, subject to their availability, will be supplied copies upon payment of the cost of copying, handling and postage, which costs will be estimated and set from time to time in the discretion of the Commissioner. Certified official copies of public records are available upon receipt of payment. Unofficial copies of public records are available in an electronic format. Electronic formats of public records are not considered certified official copies of the Department.

(4) In-person inspection of requested public records must be made within two weeks of the grant of the request or a new written request must be submitted.

(5) The Department is not required to disclose those types of information or documents that are exempt from disclosure by a federal agency under the Federal Freedom of Information Act.

Author: Irene B. Collins, Commissioner

Statutory Authority: Code of Ala. 1975, §§36-12-40 to 36-12-42, 41-22-4, 45 C.F.R. 1321.51.

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

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.

70-X-1-.09 Declaratory Rulings.

(1) The Commissioner may issue declaratory rulings to any person substantially affected by a rule with respect to the validity of the rule, or with respect to the applicability to any person, property, or state of facts of any rule or statute enforceable by the Department, or with respect to the meaning and scope of any order of the Department. Such rulings shall be issued provided:

(a) The petitioner shows that he/she is substantially affected by the rule in question;

(b) Sufficient facts are supplied in the written request to permit the Commissioner to make a valid determination; and

(c) The request arises from an actual question or controversy.

(2) In order to be considered, a petition for a declaratory ruling shall contain the following minimum information:

(a) A title reflecting that the petition seeks a declaratory ruling on a rule or rules.

(b) The Petitioner's Name, Address, and Telephone Number.

(c) A statement identifying all rules or statutes that may be involved in the petition, if known.

(d) A clear and concise statement of the precise factual situation involved.

(e) The exact question to which an answer is desired.

(f) The reason for submitting the petition.

(g) Full disclosure of the petitioner's interest.

(h) A statement as to whether the petitioner's case or question presented is presently under consideration by the Department or by any judicial or quasi-judicial body in any pending proceedings, and if so where.

(i) A certification and signature of Petitioner before a notary public or other person authorized by law to administer oaths that the information contained in the petition is true and correct to the best of petitioner's information and belief, and that the petition has not been filed for any improper purposes, or for delay or harassment.

(3) Failure or refusal to completely disclose or provide the minimum information required by these rules shall be grounds for dismissal of the petition.

(4) Declaratory rulings shall not issue with respect to generalized grievances or matters that are currently pending before the Department or any judicial or quasi-judicial body in any administrative review, formal hearing, proceeding, contested case or litigation, nor be utilized as a means of collateral attack on or appellate review of any final decision of the Department, or any judicial or quasi-judicial body.

(5) All rulings will be made in accordance with the Alabama Administrative Procedure Act, Code of Ala. 1975, §41-22-11.

Author: Irene B. Collins, Commissioner

Statutory Authority: Code of Ala. 1975, §§38-3-8 to 38-3-9, 41-22-11.

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

(1) Any person may petition the Department for the adoption of a new rule or for the repeal or change of any existing rule.

(2) Action by the Department on any such petition shall be as provided in the Code of Ala. 1975, §41-22-8.

(3) In order to be considered, a petition for a rule change shall be in writing and contain the following minimum information:

(a) A title reflecting that the petition seeks the adoption of a new rule, or the modification or repeal of an existing rule or rules.

(b) The Petitioner's Name, Address, and Telephone Number.

(c) A statement identifying all rules or statutes that may be involved should the relief sought in the petition be granted in whole or in part.

(d) A clear and concise statement or narrative as to why the new rule, or modification or repeal of an existing rule is needed, specifying:

(i) the persons or class of persons it would affect and how it would affect them;

(ii) the benefits and disadvantages of the proposed rule, modification or repeal;

(iii) the estimated cost or cost savings to the Department;

(iv) any other reasons why the rule, modification, or repeal should be accepted by the Department;

(v) the legal authority for the proposed rule, modification or change;

(vi) the names and complete addresses of any persons, firms, organizations, and the identity of any class of persons known to the petitioner who would be or could be adversely affected by the proposed rule, modification or repeal.

(e) The reason for submitting the petition, if not apparent from the face of the petition.

(f) Full disclosure of the petitioner's interest.

(g) A statement as to whether the issues presented by the petition are presently under consideration by the Department or by any judicial or quasi-judicial body in any pending proceedings, and if so where.

(h) A certification and signature of Petitioner before a notary public or other person authorized by law to administer oaths that the information contained in the petition is true and correct to the best of petitioner's information and belief, and that the petition has not been filed for any improper purposes, or for delay or harassment.

Author: Irene B. Collins, Commissioner

Statutory Authority: Code of Ala. 1975, §§38-3-8, 38-3-9, 41-22-8.

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

70-X-1-.11 Evaluation of Programs.

(1) The Department shall monitor the administration of area plans. The Department shall evaluate and monitor the performance of all Department grantees, subgrantees, service providers and contractors to ensure that all projects receiving federal and/or state funds operate effectively and in compliance with the conditions of their grants, subgrants or contracts and within federal and state rules and regulations.

(2) Criteria to be used during formal evaluations or monitoring will be provided to area agencies and Department grantees, subgrantees, service providers or contractors with a minimum 10-day notice. It is the responsibility of the area agency to inform their respective grantees, subgrantees, service providers or contractors of such evaluation.

(3) Termination or suspension of an area plan, withholding funds, or other punitive actions may be taken by the Department if an area agency, grantee, service provider, subgrantee or contractor fails to take action and correct problems specified by the Department as a result of monitoring or evaluation findings.

(4) The Department retains the right to conduct unannounced monitoring or evaluations to service sites or programs.

(5) At least once every two years, the Department will conduct an on-site performance evaluation or monitoring with each area agency or Department grantee, subgrantee, service provider

or contractor. During interim years, the Department may conduct a self-assessment review with each area agency or Department grantee, subgrantee, service provider or contractor. Such evaluation, monitoring or self-assessment will be carried out prior to the end of the fiscal year.

(6) In the event that the Department discovers possible fraud, mismanagement, or program abuse during the course of a performance evaluation, assessment or monitoring, the Commissioner of the Department has the option to immediately suspend the program.

Author: Irene B. Collins, Commissioner

Statutory Authority: Older Americans Act of 1965 as amended (Public Law 109-365); 45 C.F.R. 1321, Code of Ala. 1975, §§38-3-1 to 38-3-9.

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