

APA-3
Revised 1/2018

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

(Pursuant to Code of Alabama 1975, §41-22-6, as amended).

I certify that the attached is/are correct copy/copies of rule/s as promulgated and adopted on the 2nd day of June, 2023, and filed with the agency secretary on the 2nd day of June, 2023.

AGENCY NAME: Department of Mental Health

 Amendment X New Repeal (Mark appropriate space)

Rule No. 580-5-30-.16
(If amended rule, give specific paragraph, subparagraphs, etc., being amended)

Rule Title: DMH-DHR Abuse Registry Procedures and Due Process

ACTION TAKEN: State whether the rule was adopted with or without changes from the proposal due to written or oral comments:

Without

NOTICE OF INTENDED ACTION PUBLISHED IN VOLUME XLI,
ISSUE NO. 6, AAM, DATED: March 31, 2023.

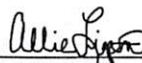
Statutory Rulemaking Authority: Alabama Department of Mental Health

(Date Filed)
(For LSA Use Only)

REC'D & FILED

JUN 02 2023

LEGISLATIVE SVC AGENCY


Certifying Officer or his or her
Deputy

(NOTE: In accordance with §41-22-6(b), as amended, a proposed rule is required to be certified within 90 days after completion of the notice.

580-5-30-.16 DMH-DHR Abuse Registry Procedures and Due Process

(1) Section 38-9-8, *Code of Alabama 1975*, also known as "Shirley's Law," provides for the establishment and maintenance of a registry by Department of Human Resources (DHR), listing the names of certain individuals and caregivers whereby a finding of abuse, neglect, or exploitation has been indicated as defined in 38-9-8, *Code of Alabama 1975*, against certain recipients of the Department of Mental Health Developmental Disabilities Division's system of care.

(2) The registry shall provide for the inclusion of specific documented findings by the Alabama Department of Mental Health Developmental Disabilities Division (DMH) of neglect, abuse, or exploitation by any individual or caregiver, as well as a brief statement by any individual disputing the findings. In the case of inquiries to the registry concerning an individual listed in the registry, any information disclosed concerning an indicated finding shall also include disclosure of any statement in the registry relating to the finding or a clear and accurate summary of such statement. Individuals shall be notified in writing prior to submission of their names and related information to the registry and allowed the opportunity for a hearing in the event the individual disputes the findings.

(3) In addition to the definitions utilized by Department of Human Resources in Section 38-9-8, *Code of Alabama 1975*, Department of Mental Health shall utilize the following additional definitions in determining if a finding of abuse, neglect, or exploitation is indicated against a recipient of DMH Developmental Disabilities Division services:

(a) Subject Individual: Individual or caregiver whereby abuse, neglect, or exploitation has been indicated and is subjected to placement on DHR's abuse registry.

(b) Physical Abuse: The intentional infliction of physical pain, injury, or willful deprivation of necessary services to maintain physical and mental health by a caregiver or other person.

(c) Sexual Abuse: Any conduct that is a crime as defined in Sections 13A-6-60 to 13A-6-70, *Code of Alabama 1975*. Forms of sexual abuse include, but are not limited to, unwanted or non-consensual sexual contact or activity using force, coercion or threats, rape, incest, sodomy, and indecent exposure.

(d) Verbal Abuse: The infliction of disparaging and angry outbursts such as name calling, blaming, threatening, or making derogatory comments that demean or could reasonably be expected to cause shame, ridicule, humiliation, or emotional distress.

(e) Neglect: The intentional or unintentional failure of a provider to provide food, shelter, clothing, medical services, supervision, or basic needs for safety for an individual who is unable to care for himself or herself.

(f) Mistreatment: Any act or threat of intimidation, harassment, or similar deed to cause harm or create the fear of harm to a vulnerable person by the caregiver or another person.

(g) Exploitation: The expenditure, diminution, or use of the property, assets, or resources of a person subject to protection under the provision of Sections 38-9-1 through 11, *Code of Alabama 1975*, without the express voluntary consent of that person or legally authorized representative.

(4) Upon an indicated finding of abuse, neglect, or exploitation by Department of Mental Health, the Department shall serve notice by Certified U.S. Mail, return receipt requested, upon the subject individual's last known address, stating the facts and circumstances substantiating the indicated finding and the submission of the subject individual's name to the Department of Human Resources to place their name on the "Shirley's Law" abuse registry. The notice shall also inform the subject individual of the right to appeal the indicated finding and to request a hearing before the Department, following the parameters of §41-22-12, *Code of Alabama 1975*.

(5) The DMH-certified and/or contracted provider agency shall cooperate with DMH staff regarding further information on an incident of abuse, neglect, or exploration, along with providing DMH with the subject individual's current contact information.

(6) If, upon receipt of the indicated finding notice, a subject individual requests a hearing before the Department, said request shall be delivered in writing within thirty (30) days' receipt of the notice to: ADMH Commissioner, 100 South Union Street, Suite 536 Legal, Montgomery, AL 36104.

(7) Upon final order from the Department, the subject individual may request judicial review pursuant to §41-22-20, *Code of Alabama 1975*.

(8) The Alabama Department of Mental Health hereby adopts by reference as its rule 41-22-12 through 21, *Code of Alabama 1975*, as amended, governing contested cases, appeals, and related proceedings regarding any formal hearing under this Section.

Author: Division of Developmental Disabilities

Statutory Authority: Code of Ala. 1975, §22-50-11.

History: New Rule: Filed: March 20, 2023; effective August 14, 2023.

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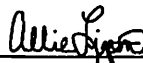
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